

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INTRODUCTION

DAN LaCOUTURE, DAN KECZMER, JACK	:	X	
CARLSON, RICHARD BRENNAN, BRAD	:		Civil Action No. 14-cv-2531
MAXWELL, MICHAEL PELUSO, TOM	:		CLASS ACTION COMPLAINT
YOUNGHANS, ALLAN ROURKE, and	:		
SCOTT BAILEY, Individually and on Behalf	:		
of All Others Similarly Situated,	:		
	:		
	:		
Plaintiffs,	:		
	:		
vs.	:		
	:		
NATIONAL HOCKEY LEAGUE,	:		
	:		
Defendant.	:		
	:		
	:		<u>JURY TRIAL DEMANDED</u>
	:	X	

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The above-captioned plaintiffs (“Plaintiffs”) bring this class action complaint against the National Hockey League (the “NHL”). Plaintiffs seek damages, including punitive damages, and equitable relief on behalf of a class of all former and current NHL players as a result of the NHL’s unlawful exploitation of its players. Through the sophisticated use of extreme violence as a commodity, from which the NHL has generated billions of dollars, the NHL has subjected and continues to subject its players to the imminent risk of head trauma and, as a result, devastating and long-term negative health consequences. The NHL has failed and continues to fail to warn its players of these risks and consequences of head trauma, concealing material scientific and anecdotal information from its players. The NHL has failed to institute policies and protocols that could have and will protect its players from suffering or exacerbating head trauma sustained during practice or in games. Plaintiffs further allege as follows:

## **I. INTRODUCTION**

1. Ice hockey is the most difficult team sport in the world.<sup>1</sup> The puck changes possession on average 450 times per game.<sup>2</sup> Players move at speeds of up to 30 miles an hour.<sup>3</sup> For this, ice hockey demands levels of agility, dexterity, strength, and mental prowess like no other team sport.

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<sup>1</sup> *Boxing’s Knockout Punch*, <http://sports.espn.go.com/espn/page2/sportSkills> (last visited Mar. 31, 2014).

<sup>2</sup> Anssi Arjala, *et al*, *An instrument for analyzing offensive game sense in ice hockey*, April, 2013, <http://www.theseus.fi/bitstream/handle/10024/59884/Arjala%20Petaja%20Final.pdf?sequence=>; *Hockey IQ Train Your Brain*, <http://www.icejets.com/page/show/175814-hockey-sense> (last visited Mar. 31, 2014).

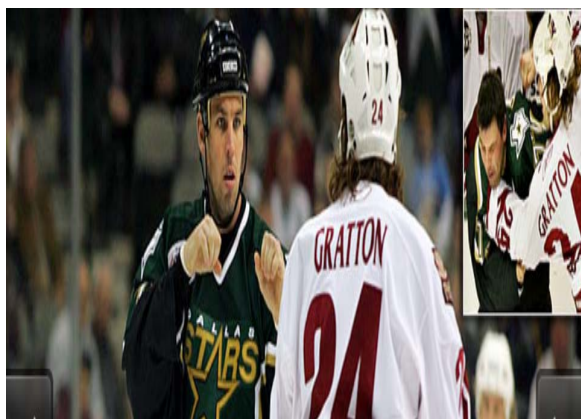
<sup>3</sup> Sarah Grim Hostetler, Huiyun Xiang & Gary A. Smith, Characteristics of Ice Hockey – Related Injuries Treated in US Emergency Departments, 2001 – 2002, *Pediatrics*, (Dec. 6, 2004), <http://pediatrics.aappublications.org/content/114/6/e661.full.html>.

2. While fans have continually flocked to marvel at the world's best athletes competing in the sport of ice hockey, the NHL has looked at ice hockey players as a means to an end. For the NHL, it has been about exploiting the supreme athleticism of its players in order to generate revenue. And early on, the NHL saw extreme violence as a way to bring more fans to the game.

3. As opposed to other elite-level ice hockey organizations, like the European ice hockey leagues and the Olympics, the NHL fostered and promoted an extremely physical game of ice hockey. Through enclosed rink designs and lax rules for fighting, the NHL vectored a culture of extreme violence and packaged the spoils to adoring fans. Throughout the NHL's history, iconic violence has thrived, exemplified by players like the "Broad Street Bullies," and other notable "enforcers" and "goons" throughout the NHL's many different eras.







4. There are countless references in popular culture documenting, parodying and recognizing the NHL's inextricable ties to extreme violence, including poignant images such as:





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5. Ultimately, the NHL has successfully extracted prolific sums of money exploiting its players through extreme violence for many decades. In fact, in 2012 the NHL's revenues reached an all-time high of \$3.3 billion.<sup>5</sup>

6. Plaintiffs bring this class action lawsuit on behalf of all current and former NHL players because the NHL's exploitation of its players has been and is inequitable. Plaintiffs and the Class (as defined below) have suffered and will continue to suffer serious health problems as a result of the NHL's sophisticated use of extreme violence to bring fans to the game in hockey arenas, on television, the radio and the Internet.

7. Specifically, despite the fact that the NHL's violent game design induces head trauma, including concussions, the NHL has failed and continues to fail to warn its players of the risks to their lives and the devastating and long-term negative health effects. In fact, the NHL affirmatively concealed specific anecdotal evidence from players and scientific evidence about

<sup>4</sup> Bobby Clarke, *Fiery Leader of the Flyers*, SPORTS ILLUSTRATED (Feb. 23, 1976), <http://sportsillustrated.cnn.com/vault/cover/featured/8473/index.htm> (last visited Mar. 31, 2014); *The Best*, SPORTS ILLUSTRATED (June 10, 2013), <http://www.sicovers.com/Product.aspx?pid=2644> (last visited Mar. 31, 2014).

<sup>5</sup> Michael Grange, *Bettman: NHL earned big revenues this season* (May 31, 2012), <http://www.sportsnet.ca/hockey/nhl/grange-bettman-large-revenues-nhl/> (last visited Mar. 31, 2014).

the health risks and consequences associated with playing in the NHL, including head injuries. To maintain its billions in revenue, the NHL also purposefully failed to institute policies and protocols that would protect its players from exacerbating injuries sustained during practice or in games.

8. Plaintiffs seek damages, including punitive damages, and equitable relief on behalf of the Class. Among other things, Plaintiffs ask this Court to order the NHL to institute a medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have suffered and will suffer as a result of the NHL's misconduct.

## **II. JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332(d), in that the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and is a class action of more than 100 potential Class members in which at least one Plaintiff is a citizen of a State different from the NHL.

10. This Court has personal jurisdiction over the NHL because the NHL has substantial and continuous business contacts with the State of New York.

11. Venue is proper in this District under 28 U.S.C. §1391. The NHL resides, is found, and has its principal place of business, has an agent, or has transacted substantial business within the Southern District of New York and the NHL is an entity with an unincorporated association subject to personal jurisdiction in this District. Further, a substantial part of the events giving rise to the claims alleged herein occurred in the Southern District of New York.

## **III. THE PARTIES**

12. Plaintiff Dan LaCouture ("LaCouture") is a resident and citizen of the State of Massachusetts. LaCouture played in the NHL at various times from 1998 until 2009. LaCouture

was the 29th draft pick into the NHL in 1996. LaCouture played in 348 NHL games. LaCouture was involved in a total of 52 fights in NHL preseason and regular season games. LaCouture was a forward. In one NHL game, LaCouture suffered a concussion at the hands of opposing player Robyn Rehr (“Rehr”), as depicted below:



13. Rehr currently plays in the NHL<sup>6</sup>, has played in over 1000 NHL games,<sup>7</sup> has been involved in 41 fights in NHL games,<sup>8</sup> and recently signed a two-year, \$6 million contract extension.<sup>9</sup> Meanwhile, LaCouture was, has been and will continue to be damaged as a result of the NHL’s misconduct further described herein. Among other things, LaCouture suffers from headaches, irritability, sensitivity to light, change of personality, and depression.

14. Plaintiff Dan Kecmer (“Keczmer”) is a resident and citizen of the State of Tennessee. Kecmer was the 201st draft pick into the NHL in 1996. Kecmer played in 235 NHL games. Kecmer played in 12 Stanley Cup playoff games. Kecmer was a defenseman.

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<sup>6</sup> Players: Robyn Regehr, NHL.com, <http://www.nhl.com/ice/player.htm?id=8467344> (last visited Apr. 4, 2014).

<sup>7</sup> *Id.*

<sup>8</sup> Robyn Regehr, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/224> (last visited Apr. 4, 2014).

<sup>9</sup> Arash Markazi, Robyn Regehr signs 2-year extension, ESPN LA (May 30, 2013), [http://espn.go.com/los-angeles/nhl/story/\\_/id/9326764/robyn-regehr-signs-two-year-extension-los-angeles-kings](http://espn.go.com/los-angeles/nhl/story/_/id/9326764/robyn-regehr-signs-two-year-extension-los-angeles-kings).

Keczmer was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

15. Plaintiff Jack Carlson ("Carlson") is a resident and citizen of the State of Minnesota. Carlson was the 117th draft pick into the NHL in 1974. Carlson played in the NHL at various times from 1978 until 1987. Carlson played in 236 NHL games. Carlson was a forward. Carlson was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

16. Plaintiff Richard Brennan ("Brennan") is a resident and citizen of the State of Massachusetts. Brennan was the 46th draft pick into the NHL in 1991. Brennan played in the NHL from 1996 to 2003. Brennan played in 50 NHL games. Brennan was a defenseman. Brennan was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

17. Plaintiff Brad Maxwell ("Maxwell") is a resident and citizen of the State of Minnesota. Maxwell played in the NHL at various times from 1977 until 1987. Maxwell was the 7th draft pick into the NHL in 1977. Maxwell played in 612 NHL games. Maxwell was a defenseman. Maxwell was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

18. Plaintiff Michael Peluso ("Peluso") is a resident and citizen of the State of Minnesota. Peluso played in the NHL at various times from 1990 until 1998. Peluso was the 190th draft pick into the NHL in 1984. Peluso played in 458 NHL games. Peluso was involved in a total of 179 fights in NHL games. Peluso had 1,951 penalty minutes during his NHL career. Peluso is one of four players to incur over 400 penalty minutes in one season. Peluso was a

forward. Peluso was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

19. Plaintiff Tom Younghans ("Younghans") is a resident and citizen of the State of Minnesota. Younghans played in the NHL at various times from 1976 until 1982. Younghans played in 429 NHL games. Younghans was involved in a total of 31 fights in NHL games. Younghans was a forward. Younghans was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

20. Plaintiff Allan Rourke ("Rourke") is a resident and citizen of Canada. Rourke played in the NHL at various times from 2003 until 2008. Rourke was the 154th draft pick into the NHL in 1998. Rourke played in 55 NHL games. Rourke was involved in one fight in an NHL regular season game. Rourke was a defenseman. Rourke was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

21. Plaintiff Scott Bailey ("Bailey") is a resident and citizen of Canada. Bailey played in the NHL in 1995 and 1996. Bailey was the 112th draft pick into the NHL in 1992. Bailey played in 19 NHL games. Bailey was a goalie. Bailey was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

22. Defendant NHL, which maintains its principal place of business at 1185 Avenue of the Americas, New York, New York 10036, is an unincorporated association consisting of 30 franchised member clubs. The NHL posted \$3.23 billion in total revenue for the 2011-2012 season, the last full season before the lockout-shortened the 2012-2013 campaign.<sup>10</sup> In 2012-

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<sup>10</sup> Christopher Botta, *NHL fleshes out three-year plan*, SPORTS BUS. JOURNAL, (Sept. 9, 2013), <http://www.sportsbusinessdaily.com/Journal/Issues/2013/09/09/Leagues-and-Governing-Bodies/NHL-reorg.aspx>.

2013, when each team played 48 regular-season games instead of the usual 82, the league has projected \$2.4 billion in total revenue.<sup>11</sup>

23. The NHL is in the business of, among other things, operating the sole major professional hockey league in the United States and Canada. As such, the NHL promotes, organizes, and regulates the sport of professional hockey in the United States and Canada.

#### IV. SUBSTANTIVE ALLEGATIONS

##### A. The Origins of the NHL

24. Ice hockey's modern roots began on March 3, 1875, in Victoria Skating Rink in Montreal, Canada.<sup>12</sup> That is where the first, documented and organized indoor ice hockey game occurred.<sup>13</sup> For centuries and perhaps millennia prior, people used various, crude devices and rules to synthesize "ball and stick" games on ice.<sup>14</sup>

25. In the years following the first game at Victoria Skating Rink, students at McGill University and players called the "Montreal Victorias" started ice hockey clubs.<sup>15</sup> As popularity for the sport grew, the first "world championship" took place in 1883 at the Winter Carnival in Montreal, Canada.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Earl Zuckerman, *McGill's contribution to the original origins of ice hockey*, McGill University (March 17, 2006), [http://web.archive.org/web/20061004083915/http://www.athletics.mcgill.ca/varsity\\_sports\\_article.ch2?article\\_id=81](http://web.archive.org/web/20061004083915/http://www.athletics.mcgill.ca/varsity_sports_article.ch2?article_id=81).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



26. Subsequently, in 1886, the first official hockey league, the Canadian Amateur Hockey Association, was founded in Montreal, Canada.<sup>17</sup> The Dominion Hockey Association, as it was also known, created a hockey season for teams in pursuit of a championship.<sup>18</sup> In 1893, the first championship cup was awarded to the championship team – this cup is now known as the Stanley Cup, awarded to the top NHL team.

27. The sport's popularity grew and, eventually the first U.S. ice hockey league was formed in New York City, in 1896. Ice hockey was also played in Europe around that time.<sup>19</sup> In 1895, there was a game played in Buckingham Palace.<sup>20</sup> Eventually, the first European ice hockey league was formed in 1908.<sup>21</sup>

28. The first professional leagues were formed in the early 1900s, *e.g.*, the Western Pennsylvania Hockey League and the International Professional Hockey League.<sup>22</sup> In 1910, ice hockey enthusiasts formed the National Hockey Association.<sup>23</sup> The National Hockey

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Murky Beginnings The Establishment of the Oxford University Ice Hockey Club ca. 1885*, Oxford University Ice Hockey Club, <http://web.archive.org/web/20020320214131/http://www.ouihc.org/historybeg.asp> (last visited Mar. 26, 2014)

<sup>20</sup> *Id.*

<sup>21</sup> *History of Ice Hockey 1908-1913 Ligue Internationale De Hockey Sur Glace*, <http://web.archive.org/web/20061017052145/http://www.iihf.com/iihf/history/1908.htm> (last visited Mar. 26, 2014).

<sup>22</sup> *Professional Hockey Leagues Exploring the Past Hockey Leagues of North America, International Pro Hockey League (1904-1907)*, [http://www.hockeyleaguehistory.com/International\\_Pro\\_Hockey\\_League.htm](http://www.hockeyleaguehistory.com/International_Pro_Hockey_League.htm) (last visited Mar. 26, 2014)

<sup>23</sup> *Professional Hockey Leagues Exploring the Past Hockey Leagues of North America, National Hockey Association (1909-1917)*, [http://www.hockeyleaguehistory.com/National\\_Hockey\\_Association.htm](http://www.hockeyleaguehistory.com/National_Hockey_Association.htm) (last visited Mar. 26, 2014)

Association codified a three-period game structure and a penalty mechanism for dealing with rough play.<sup>24</sup>

29. In 1917, the National Hockey Association reorganized as the NHL.<sup>25</sup> The NHL operates in the United States and Canada, utilizing players from around the globe.<sup>26</sup> Correspondingly, ice hockey is played at the Olympics using NHL and other professional players.<sup>27</sup> Similarly, professional ice hockey is played in leagues throughout most European countries, including, but not limited to, Austria, the Czech Republic, Finland, Germany, Norway, Russia, Slovakia, Sweden and Switzerland.<sup>28</sup>

### **B. The NHL Quickly Establishes Its Roots in Extreme Violence**

30. The NHL has long been known for its violence. Some early violence was attributable to the inherent nature of the game, which developments in player equipment have sought to nullify. For instance, NHL goalie Jacques Plante was the first to introduce a goaltender mask for everyday use in a regular season game.<sup>29</sup> Before that, NHL goalies were notoriously

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<sup>24</sup> *Id.*

<sup>25</sup> <http://www.nhl.com/history/112617nhl.html> (last visited Mar. 26, 2014)

<sup>26</sup> <http://www.nhl.com/ice/teams.htm?navid=nav-tms-main> (last visited Mar. 26, 2014); <http://www.nhl.com/ice/playersearch.htm?navid=nav-ply-plyrs#> (last visited Mar. 26, 2014).

<sup>27</sup> <http://www.sochi2014.com/en/athletes-search?sport=IH&country=all&q=> (last visited, Mar. 26, 2014).

<sup>28</sup> *Id.*

<sup>29</sup> *This Day In History: Jacques Plante is the first goalie to wear a facemask* (Nov. 1, 1959) HISTORY.COM (Nov. 1, 1959), <http://www.history.com/this-day-in-history/jacques-plante-is-the-first-goalie-to-wear-a-facemask> (last visited Mar. 27, 2014).

afflicted by facial injuries from pucks. Likewise, NHL goalie Emile Francis introduced a catching mitt based on the design of a first baseman's glove to protect the hands of goalies.<sup>30</sup>

31. Nevertheless, the NHL has fostered violent behavior not inherent to the sport since its inception. There are some enigmatic examples of the type of violent behavior in the early years of the NHL that set the foundation for the eventual cultural association between violence and hockey, which association, in turn, has become the NHL's principle revenue generator.

### **1. The Coutu Incidents**

32. Wilfrid Arthur Coutu ("Coutu") was a notorious NHL player. Coutu played in the NHL from its inception in 1917 until 1927.<sup>31</sup> Coutu, while playing for the Boston Bruins, fought with his teammate Eddie Shore ("Shore") during a practice.<sup>32</sup> In the melee, Coutu severed Shore's ear, which was later sewn back on.<sup>33</sup> The NHL imposed only a \$50 fine on Coutu for this incident, which was eventually refunded.<sup>34</sup>

33. Two years later, in 1927, spurred on by his coach, Coutu instigated a bench-clearing brawl during a game in the NHL's championship series.<sup>35</sup> Coutu tackled one referee

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<sup>30</sup> *Pre-Game Skate: Origins & Evolution, Evolution of Goaltender's Equipment*, CHIN, <http://www.museevirtuel-virtualmuseum.ca/edu/ViewLoitLo.do%3Bjsessionid=4478F274143CCE61A0986B06CBCE6469?method=preview&lang=EN&id=5964> (last visited Mar. 27, 2014).

<sup>31</sup> Dave Stubbs, *Coutu's expulsion longest suspension in NHL history*, THE STAR PHOENIX, Dec. 26, 2007.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

and challenged another.<sup>36</sup> The NHL banned Coutu after the incident and fined him \$100, only to later lift the ban in 1932.<sup>37</sup>

## 2. The Cleghorn Incidents

34. Sprague Cleghorn (“Cleghorn”) was a notoriously violent player. Cleghorn played on various teams in the NHL from 1918 until 1928, including alongside Coutu for several years.<sup>38</sup>

35. In 1922, Cleghorn ignited a brawl during which he injured three different players on the opposing Ottawa Senators’ team.<sup>39</sup> The managers of the Ottawa Senators unsuccessfully attempted to expel Cleghorn from the NHL.<sup>40</sup> The referee of the game during which the incident occurred called Cleghorn a “disgrace to the game.”<sup>41</sup>

36. Soon after, Cleghorn again attacked Lionel Hitchman (“Hitchman”) of the Ottawa Senators during a game.<sup>42</sup> Cleghorn used his hockey stick to strike Hitchman over the head. Despite the fact that Cleghorn was criminally charged and found guilty of assault for his misconduct during the game, Cleghorn was fined only \$50 by the NHL.<sup>43</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?type=Player&mem=P195803&list=ByName>, [www.HHOF.com](http://www.HHOF.com) (last visited Mar. 27, 2014).

<sup>39</sup> *Want Cleghorn Out of Hockey*, QUEBEC TELEGRAPH (Quebec City, Quebec), Feb. 3, 1922, at 2.

<sup>40</sup> *Id.*

<sup>41</sup> WIKIPEDIA, [http://en.wikipedia.org/wiki/Sprague\\_Cleghorn](http://en.wikipedia.org/wiki/Sprague_Cleghorn) (last visited Mar. 27, 2014).

<sup>42</sup> *Violence in ice hockey*, [http://www.articleworld.org/index.php/Violence\\_in\\_ice\\_hockey](http://www.articleworld.org/index.php/Violence_in_ice_hockey), ARTICLEWORLD.ORG (last visited Mar. 27, 2014).

<sup>43</sup> *Id.*

37. The NHL inducted Cleghorn into its “Hall of Fame” in 1958.<sup>44</sup>

### 3. The Richard Incident

38. Maurice Richard (“Richard”) played in the NHL for the Montreal Canadians from 1942 until 1960.<sup>45</sup> Richard was nicknamed the “Rocket” for his speed and scoring acumen.<sup>46</sup> Richard was the first NHL player to achieve the feat of 50 goals in 50 games, and tallied 544 goals in his career.<sup>47</sup>

39. In a game against the Boston Bruins in 1955, Richard was hit in the head with a stick by Bruins player Hal Laycoe, which required Richard to receive stitches to stop the bleeding.<sup>48</sup> In retaliation, Richard struck Laycoe on the shoulder with his stick, punched another Bruins player in the face, and punched a referee.<sup>49</sup> The Boston police attempted to arrest Richard in the locker room but were kept away by Richard’s teammates.<sup>50</sup>

40. The NHL subsequently held a hearing at which it determined it would suspend Richard for the remainder of the season,<sup>51</sup> also due, in part, to the fact that Richard had previously slapped a referee in the face during another game.<sup>52</sup>

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<sup>44</sup> <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?type=Player&mem=P195803&list=ByName>, [www.HHOF.com](http://www.HHOF.com) (last visited Mar. 27, 2014).

<sup>45</sup> <http://www.mauricerichard.org/Biography-english.html> (last visited Mar. 27, 2014).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Rocket Richard Riot Still Stirs Controversy, Emotion*, THE WINDSOR STAR, Mar. 18, 1980.

<sup>49</sup> *Id.*; see also Richard Goldstein, *Hal Laycoe, 75, N.H.L. Players Whose High Stick Led to Riot*, N.Y. TIMES, May 2, 1998.

<sup>50</sup> *Great Moments In Hockey History: Rocket Richard Riot*, Greatest Hockey Legends.com (Mar. 17, 2013), <http://www.greatesthockeylegends.com/2013/03/rocket-richard-riot.html>.

<sup>51</sup> Richard Goldstein, *Hal Laycoe, 75, N.H.L. Players Whose High Stick Led to Riot*, N.Y. TIMES, May 2, 1998.

41. In response, then NHL president Clarence Campbell received pleas for revocation of Richard's suspension, as well as death threats, from Montreal Canadian's fans.<sup>53</sup> During the first game following the suspension, thousands of Montreal Canadian's fans rioted at the ice hockey arena before, during and after a game.<sup>54</sup> "The Richard Riot" caused an estimated \$100,000 in property damage, 37 injuries and 100 arrests.<sup>55</sup>

42. The NHL quickly inducted Richard into its "Hall of Fame" in 1961, the year after Richard retired, waiving the customary three-year waiting period.<sup>56</sup>

### **C. The NHL Fosters a Culture of "Enforcers" and "Goons"**

43. As the NHL continued to thrive in subsequent eras as a result of players like Coutu, Cleghorn, and Richard, so did routine violence, including through players known as "enforcers" or "goons." An "enforcer" or "goon" is a player known for his fighting skills to protect teammates and respond aggressively to physical or foul play.<sup>57</sup>

44. For instance, Dave Schultz ("Schultz") was known in the NHL as "The Hammer."<sup>58</sup> Schultz played in the NHL from 1971 until 1980 on several different teams.<sup>59</sup>

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<sup>52</sup> WIKIPEDIA, [http://en.wikipedia.org/wiki/Richard\\_Riot](http://en.wikipedia.org/wiki/Richard_Riot) (last visited Mar. 27, 2014).

<sup>53</sup> See [www.hhof.com](http://www.hhof.com), <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p196108&type=Player&page=bio&list=ByName> (last visited Mar. 27, 2014).

<sup>54</sup> *The Richard Riot: An Introduction*, <http://www.mauricerichard.org/Videos/TheRichardRiot/Riot-Intro.html> (last visited Mar. 27, 2014).

<sup>55</sup> *Id.*

<sup>56</sup> <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p196108&type=Player&page=bio&list=ByName> (last visited Mar. 27, 2014)).

<sup>57</sup> Alex Capstick, *Are ice hockey "enforcers" the toughest guys in sport?*, BBC NEWS MAGAZINE, Jan. 18, 2012, <http://www.bbc.co.uk/news/magazine-16383129>.

<sup>58</sup> DAVE SCHULTZ, *THE HAMMER: CONFESSIONS OF A HOCKEY ENFORCER* (Summit Books 1st ed. 1981).



Schultz was a member of the NHL's Philadelphia Flyers, who were known as the "Broad Street Bullies," and who were renowned for their punishing physical play.<sup>60</sup> Schultz has the record for the most penalty minutes in a single season, at 472.<sup>61</sup> Schultz was in a total of 158 fights in NHL games.<sup>62</sup> Schultz is famously quoted, after winning the Stanley Cup in 1974, as stating:

"I'm more valuable in the penalty box than I am sitting on the bench . . . I'm not gonna stop fighting even if I could. It's one of my assets and if it helps win games I'm going to keep fighting."<sup>63</sup>

45. On April 6, 2014, there was a bench-clearing brawl during a charity ice hockey game between the New York City Police Department ("NYPD") and the New York City Fire Department at the NHL's New York Islanders rink, as depicted below:

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<sup>59</sup> Players: Dave Schultz, NHL.com, <http://www.nhl.com/ice/player.htm?id=8451245> (last visited Mar. 28, 2014).

<sup>60</sup> See, e.g., James Christie, *Former Bully Repents Past*, THE GLOBE AND MAIL (CANADA), Nov. 12, 1981 (stating that Schultz's "chief business was the restyling of faces that got in the way of Philadelphia Flyers" and "if anyone is in a position to understand what violence can do to individuals and to hockey, it is Schultz").

<sup>61</sup> *Most Penalty Minutes in an NHL Season*, Guinness Book of World Records, <http://www.guinnessworldrecords.com/records-4000/most-penalty-minutes-in-an-nhl-season/> (last visited Mar. 28, 2014).

<sup>62</sup> Dave Schultz, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1054> (last visited Mar. 31, 2014).

<sup>63</sup> WILLIAM R. MCMURTRY, INVESTIGATION AND INQUIRY INTO VIOLENCE IN AMATEUR HOCKEY, Chap. 35 (AUG. 21, 1974), <https://archive.org/details/investigatamock00onta>.



46. One of the NYPD spectators invoked Schultz's legacy in commenting on the fight to the *New York Post*:

"It was reminiscent of the old-time Rangers-Flyers games in the mid-'70s," quipped an NYPD cop who was at the game at the Nassau Coliseum. "I was waiting for [legendary Philadelphia Flyers enforcer] Dave Schultz to come out on the ice."<sup>65</sup>

47. Randy Holt ("Holt") was a notable enforcer.<sup>66</sup> Holt played in the NHL from 1974 until 1984.<sup>67</sup> Holt amassed 67 penalty minutes in one single game playing for the Los Angeles Kings against the Philadelphia Flyers.<sup>68</sup> Holt was in a total of 72 fights in NHL games.<sup>69</sup>

<sup>64</sup> Bench Clearing brawl at FDNY NYPD Hockey Game, Youtube.com, April 6, 2014, <http://www.youtube.com/watch?v=tzYojW73V50> (last visited Apr. 8, 2014).

<sup>65</sup> Larry Celona and David K. Li, *NYC Cops, firemen get in massive brawl at charity hockey game*, N.Y. Post, April 6, 2014, <http://nypost.com/2014/04/06/nypd-fdny-get-into-massive-brawl-at-charity-hockey-game/> (last visited Apr. 8, 2014).

<sup>66</sup> FLOYD CONNER, *HOCKEY'S MOST WANTED: THE TOP 10 BOOK OF WICKED SLAPSHOTS, BRUISING GOONS AND ICE ODDITIES* 218 (Potomac Books, Inc. 2002).

<sup>67</sup> Players: Dave Schultz, *supra*.

<sup>68</sup> CONNER, *supra* 218.

<sup>69</sup> Randy Holt, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/10807> (last visited Mar. 31, 2014).

48. Like Cleghorn, Dino Ciccarelli (“Ciccarelli”), an NHL player with the Minnesota North Stars, was criminally prosecuted for his on-ice misconduct in 1988.<sup>70</sup> During a game against the Toronto Maple Leafs, Ciccarelli attacked a Maple Leafs player with his stick.<sup>71</sup> Ciccarelli was subsequently sentenced to one day in jail and \$1,000 in fines.<sup>72</sup> Ciccarelli was in a total of 21 fights in NHL games.<sup>73</sup> In 2010, the NHL inducted Ciccarelli into its “Hall of Fame,” just as it has done with violent players Cleghorn and Richard.

49. Like Cleghorn and Ciccarelli, NHL player Marty McSorley (“McSorley”) was also criminally prosecuted for his misconduct on the ice. In 2000, McSorley attacked an opposing NHL player with his stick, with three seconds left in the game.<sup>74</sup> The player fell on his head, lost consciousness, and suffered a concussion.<sup>75</sup> Canadian authorities charged and convicted McSorley of assault with a weapon.<sup>76</sup> McSorley was sentenced to 18 months probation.<sup>77</sup> The NHL only suspended McSorley for a year.<sup>78</sup> The judge presiding over the McSorley case stated, “Perhaps part of the message may be that the NHL, in particular, has to

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<sup>70</sup> *Very Major Penalty*, CNN SPORTS ILLUSTRATED (Oct. 7, 2005), [http://sportsillustrated.cnn.com/hockey/nhl/news/2000/10/06/mcsorley\\_assault\\_ap/](http://sportsillustrated.cnn.com/hockey/nhl/news/2000/10/06/mcsorley_assault_ap/).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Dino Ciccarelli, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1041> (last visited Mar. 31, 2014).

<sup>74</sup> *NHL Player Found Guilty of Assault*, ABC NEWS (Oct. 6, 2000), <http://abcnews.go.com/Sports/story?id=100318>.

<sup>75</sup> *Very Major Penalty*, *supra*.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *McSorley Suspended From NHL Until Feb.*, ABC NEWS (Nov. 7, 2001), <http://abcnews.go.com/Sports/story?id=100192&page=1#.T81KPMWuXh4>.

do some internal soul-searching and ask itself: How much are we selling hockey and how much are we selling violence?”<sup>79</sup> McSorley was in a total of 225 fights in NHL games.<sup>80</sup>

50. In 1981, there was a violent fight between NHL players Christopher Nilan (“Nilan”) and Paul Baxter (“Baxter”), where Nilan threw a puck at Baxter’s head after it was over.<sup>81</sup> In commenting on the altercation, a media outlet quoted Nilan’s teammate as noting, “‘Already this year, we’ve had three eye injuries on the team due to high sticks.’”<sup>82</sup> Nilan was in a total of 251 fights in NHL games.<sup>83</sup> Baxter was in a total of 69 fights in NHL games.<sup>84</sup>

51. The media coverage of violence in the NHL is legion, including throughout the modern hockey era.<sup>85</sup>

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<sup>79</sup> Rod Mickleburgh, *Judge’s Warning Rejected by NHL; McSorley Convicted, Hockey Authorities Told to Clean Up Act*, THE GLOBE AND MAIL (CANADA), Oct 7, 2000, at A1.

<sup>80</sup> Marty McSorley, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/568> (last visited Mar. 31, 2014).

<sup>81</sup> James Christie, *Puck Throwing Points to Need for Stiffer NHL Action*, THE GLOBE AND MAIL (CANADA), Nov. 23, 1981.

<sup>82</sup> *Id.*

<sup>83</sup> Christopher Nilan, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4163>(last visited Mar. 31, 2014).

<sup>84</sup> Paul Baxter, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/10057> (last visited Mar. 31, 2014).

<sup>85</sup> See, e.g., Jeff Jacobs, *Violence in NHL Is Getting Worse Despite Penalties*, THE MIAMI HERALD, Nov. 2, 1987 (discussing the continuing violence in the NHL and pointing out recent fights); *Nolan thought Simon would only miss 12 games*, ESPN (Mar. 12, 2007), <http://sports.espn.go.com/nhl/news/story?id=2796469>; William Houston, *Wings Want NHL to Act on Higgins Incident*, THE GLOBE AND MAIL (CANADA), Apr. 1, 1983; James Christie, *Sports Violence: Controversial Can of Worms*, THE GLOBE AND MAIL (CANADA), Apr. 28, 1984; Allen Abel, *Statistics Prove Hockey is Lunacy*, THE GLOBE AND MAIL (CANADA), Nov. 14, 1977.

**D. The NHL Is Now Inextricably Linked to Extreme Violence**

52. Not surprisingly, popular culture has reflected the fused association between extreme violence and the NHL in many different media.

**1. Documentary Depictions of Extreme Violence**

53. In 2010, filmmaker George Roy of HBO Sports made a documentary film, *Broad Street Bullies*, which was about the Philadelphia Flyers team during the Schultz era.<sup>86</sup> The film was narrated by Tony Award-winning actor Liev Schreiber and begins with the statements:

In any great drama, you need heroes and villains. The Flyers are both. . . . This is going to be a wild show. . . . Blood being spilt. Actual blood. . . . It's a badge of honor to be a goon. . . . We loved to be hated. . . . We don't have to apologize to nobody.<sup>87</sup>

54. Simultaneously, the film flashes images of Philadelphia Flyers fighting, as well as these images:



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<sup>86</sup> BROAD STREET BULLIES (HBO 2010).

<sup>87</sup> *Id.*



55. In 2011, Academy Award-winning filmmaker Alex Gibney released a documentary about Nilan's career, *The Last Gladiators*.<sup>88</sup> While in the NHL, Nilan was known as "Knuckles,"<sup>89</sup> as Nilan was in 251 fights in NHL games. Nilan played in the NHL from 1979 until 1992.<sup>90</sup> Nilan was a Stanley Cup champion in 1986<sup>91</sup> and an NHL all-star in 1991.<sup>92</sup> *The Last Gladiators* portrays Nilan's life, including his violent career in the NHL, and includes images like:

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<sup>88</sup> THE LAST GLADIATORS (Jigsaw Prods. 2011).

<sup>89</sup> *Id.*

<sup>90</sup> Players: Chris Nilan, NHL.com, <http://www.nhl.com/ice/player.htm?id=8449883#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*





56. In the film, Nilan is quoted as lamenting about his exit from the NHL, “I was sad when it was over . . . . I was trying to get through a day without hurting any other person.”<sup>93</sup>

## 2. Abstract and Other Media Depictions of Extreme Violence

57. In 1988, *The Wall Street Journal* ran an article recounting lines from the play, *Welcome to the NHL*, which was presented by the Alberta Theater Project as part of the festivities for the 1988 Winter Olympic games in Calgary.<sup>94</sup> In one of the lines, the protagonist

<sup>93</sup> THE LAST GLADIATORS (Jigsaw Prods. 2011) – Official Trailer, youtube.com, <http://www.youtube.com/watch?v=ww9UAmA0RJA>.

<sup>94</sup> Frederick C. Klein, *Winter Olympics: Going for the Goldeneye, Finding Snow Art*, WALL S. J., Feb. 23, 1988.

who is sent off to learn hockey states, “I am against violence! It is against my principles!”<sup>95</sup> The coach responds, “This isn’t violence. This is sport.”<sup>96</sup>

58. There is a glut of hockey dramas and comedies that use violence as their central thesis for the respective protagonists overcoming adversity during the game.<sup>97</sup> Notably, in *Mystery, Alaska*,<sup>98</sup> Academy Award-winning actor Russell Crowe leads a makeshift team of hockey players from an obscure Alaska town in an unlikely and violent hockey game against the NHL’s New York Rangers, as depicted by one screenshot from the movie trailer:



59. In *Mystery, Alaska*, Russell Crowe was the town sheriff and the team captain.<sup>99</sup> The very next year, the film *Gladiator* was released also starring Russell Crowe, which won the

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Compare, e.g., *GOON* (Magnet 2011); *THE ROCKET* (Cinémaginaire, Inc. 2005); *YOUNGBLOOD* (United Artists 1986); *SLAP SHOT* (Kings Road Entm’t 1977).

<sup>98</sup> *MYSTERY, ALASKA* (Hollywood Pictures 1999).

<sup>99</sup> *Id.*

Best Picture Academy Award.<sup>100</sup> Russell Crowe won the Best Actor Academy Award for his role in *Gladiator* as a bloodied Roman war veteran turned slave, General Maximus Decimus Meridius.<sup>101</sup> In *Gladiator*'s opening scenes, Russell Crowe leads a Roman platoon in a battle against Nordic warriors. The Nordic warriors open their attack by sending Crowe a Roman soldier's decapitated body on a horse, while holding up the soldier's head. Ice hockey has some of its roots in Nordic tradition.<sup>102</sup>

60. In similar fashion, media has created memes associating violence with the NHL by reiterating infamous statements:

“‘He scored hockey by the number of fights. If you lost seven to one, but won five fights, he figured you won the game.’”<sup>103</sup>

“‘There are rough players and there are dirty players. I’m rough and dirty.’”<sup>104</sup>

“‘Here’s Wellwood,’ ‘[s]even-and-oh in the faceoffs, plus-two, two assists, played 20 minutes, drew eight minutes on the power play, lost a tooth and a pint of blood. What a guy.’”<sup>105</sup>

“‘If you can’t beat ‘em in the alley, you can’t beat ‘em on the ice.’”<sup>106</sup>

“‘A goal, an assist and a fight.’”<sup>107</sup>

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<sup>100</sup> GLADIATOR (Dreamworks SKG 2000).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Clint Haggart, *Battalion looking for win in spitfire rematch*, NORTH BAY NIPISSING NEWS (Feb. 13, 2014), <http://www.northbaynipissing.com/sports-story/4367560-battalion-looking-for-win-in-spitfire-rematch/>.

<sup>104</sup> Laurel Zeisler, *Historical Dictionary of Ice Hockey*, 211 (2013).

<sup>105</sup> Mike Halford, *et al*, *Of Supple Skin, Mangled Names and Playoff Beards*, THE PROVINCE (May 1, 2009), <http://www2.canada.com/theprovince/news/sports/story.html?id=f08aded2-835d-48fe-b926-40c346ffbeeb>.

<sup>106</sup> Kelly McParland, *The lines of Conn Smythe: From the Battlefield to Maple Leaf Gardens: A Hockey Icon's Story*, Ch. 3, p. 2 (2011).

61. In the classic horror film, *Friday the 13th*, the evil villain dons an ice hockey goalie's mask.<sup>108</sup>

62. *Sports Illustrated* magazine alone portrayed and documented the NHL's extreme violence several times, including two pictures of Bobby Clarke of the Philadelphia Flyers playing with missing teeth, and players physically hitting each other with their sticks and bodies while playing the game.<sup>109</sup>

**E. The NHL Uses Its Extreme Violence as a Commodity to Generate Billions of Dollars**

63. The NHL has expressly acknowledged that it has capitalized on violence. In 1988, *The Miami Herald* quoted then NHL President John Zeigler as stating, "Violence will always be with us in hockey."<sup>110</sup> Similarly, in an interview the following year with *The Wall Street Journal*, Zeigler was quoted as stating as follows in response to the suggestion that the NHL end violence:

"If you did that, you wouldn't be commissioner for long," said he. "The view of the 21 people who own the teams, and employ me, is that fighting is an acceptable outlet for the emotions that build up during play. Until they agree otherwise, it's

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<sup>107</sup> Trent Reinsmith, *50 Greatest Hockey Quotes of All Time*, BLEACHER REPORT (Jan. 25, 2011), <http://bleacherreport.com/articles/563354-50-greatest-hockey-quotes-of-all-time#articles/563354-50-greatest-hockey-quotes-of-all-time/page/45>.

<sup>108</sup> See Richard Brooker, *first to don "Friday the 13th" hockey mask, dies*, MSN News (Apr. 9, 2013), <http://news.msn.com/obits/richard-brooker-first-to-don-friday-the-13th-hockey-mask-dies>.

<sup>109</sup> Bobby Clarke, *Fiery Leader of the Flyers* SPORTS ILLUSTRATED (Feb. 23, 1976), <http://sportsillustrated.cnn.com/vault/cover/featured/8473/index.htm> (last visited Mar. 28, 2014); *Mayhem on the Ice* SPORTS ILLUSTRATED (May 6, 1974), <http://www.sicovers.com/Product.aspx?pid=1704> (last visited Mar. 28, 2014); *The Best* SPORTS ILLUSTRATED (June 10, 2013), <http://www.sicovers.com/Product.aspx?pid=2644> (last visited Mar. 28, 2014).

<sup>110</sup> Jerry Crowe, *NHL President Ziegler Denies Problems of League*, THE MIAMI HERALD, May 16, 1988.

here to stay.” He added: “The main question about fighting is, ‘Does the customer accept it?’ The answer, at present, seems to be yes.”<sup>111</sup>

64. In a similar vein, in a *Sports Illustrated* article entitled *Hockey? Call It Sockey: Hockey’s designated hit men are making a travesty of the game. It’s high time to get rid of all the goons*, the author noted how profitable violence was for the NHL:

[M]any NHL executives are scared to death that if fighting were banned from hockey, thousands of season-ticket holders who get their jollies from watching grown men in short pants in a quasi-legal, bare- knuckle battle would bail out on the spot. Violence sells. That’s not news, so does sex. If that’s what’s important, why doesn’t the league hire a bunch of bikini-clad bimbos to skate around behind the Zambonis holding up placards showing each team’s penalty totals?<sup>112</sup>

65. Former NHL President Clarence Campbell has expressly acknowledged as follows regarding the NHL:

[I]t is the business of conducting the sport in a manner that will induce or be conducive to the support of it at the box office . . . . Show business, we are in the entertainment business and that can never be ignored. We must put on a spectacle that will attract people.<sup>113</sup>

66. A famous critic of the violence in the NHL, William McMurtry (“McMurtry”), a Canadian lawyer and brother of Chief Justice of Ontario R. Roy McMurtry,<sup>114</sup> has reported:

In talking to numerous players in the NHL and WHA, they all feel that most advertising and selling of the game is over-emphasizing the fighting and brawling at the expense of educating the crowds about the skill and finesse. This past season the advertising for the NBC Game of the Week, showed a film clip of a

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<sup>111</sup> Frederick Klein, *On Sports: Less Brawl, More Teams*, WALL S. J., Nov. 17, 1989.

<sup>112</sup> E.M Swift, *Hockey? Call It Sockey: Hockey’s designated hit men are making a travesty of the game. It’s high time to get rid of all the goons*, SPORTS ILLUSTRATED, Feb. 17, 1986.

<sup>113</sup> McMurtry, *supra*, at 18.

<sup>114</sup> Helen Burnett, *McMurty Known for Taking on Impossible Cases*, LAW TIMES (Feb. 26, 2007), <http://www.lawtimesnews.com/200702261400/headline-news/mcmurtry-known-for-taking-on-impossible-cases>.

hockey fight. Can you conceive of any other sport promoting itself in this fashion?<sup>115</sup>

67. McMurtry and Campbell engaged in heated dialogue, during a public investigation into violence in the NHL.<sup>116</sup> In one exchange, Campbell acknowledged the type of pressure facing players to fight:

**McMurtry:** And right now it is extremely difficult for the player who is being provoked and being pushed to turn his back and appear to be running. The pressure of his own team-mates and from the many millions of fans make it an almost impossibility for him to do that.

**Campbell:** No, I don't accept that.

**McMurtry:** Perhaps you should talk to the players sometimes, sir.

**Campbell:** Okay.

**McMurtry:** Because they will tell you. I have talked to many of them on this, and they do not want to come and give evidence for obvious reasons. They feel it would prejudice their career with their superiors. It would prejudice what would happen to them on the ice if they were to say publicly they don't like fighting and they don't like being involved in fighting. Yet they have no alternative, because if they turn their back and appear to be frightened, they will not only be put on the bench but run out of hockey, when they are on the ice . . .

**Campbell:** Disastrous.

\* \* \*

**McMurtry:** To have the sanction there of being embarrassed and ridiculed and to be discussed among your peers and your coach and many millions of fans, that is not one of the most difficult decisions in the world for a person, to turn his back and not fight?

**Campbell:** *I didn't say it wasn't difficult.* I said it is an alternative. (Italics in original.)

**McMurtry:** *Then if you will agree it is a very difficult alternative, it is apparently what you call the free alternative.* (Italics in original.)

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<sup>115</sup> McMurtry, *supra*, at 18.

<sup>116</sup> *Id.* at 19-21.



**Campbell:** *All right.* (Italics in original)

**McMurtry:** There is incredible pressure and duress on that player not to turn his back – is that not true?

**Campbell:** I don't think it is as great as you say, *but it is real.* (Italics in original.)

**McMurtry:** There is a real pressure and duress on that player to stand his ground and to fight?

**Campbell:** *I think so, yes, yes.* (Italics in original.)<sup>117</sup>

68. The violent dynamic of the NHL is unique to the NHL. Other elite and professional ice hockey leagues have a different style of play, including Olympic and European ice hockey. The difference is attributable to the dimensions of the ice rink the NHL uses,<sup>118</sup> as well as the actual rules of the game themselves.<sup>119</sup> Indeed, McMurtry and Campbell also engaged in a heated exchange on how the NHL's rules induce a violent style of play:

**McMurtry:** All right. Let us talk about that situation. If the whistle blows and clearly play is stopped and one player physically attempts to provoke or intimidate another player, the player who is being intimidated or provoked, what are his alternatives?

**Campbell:** It all depends on his circumstance. There are a lot of factors that enter into it. *In the first place he has to evaluate his own capability opposite the other party. That is one.* (Italics in original.)

**McMurtry:** *What does that mean?* (Italics in original.)

**Campbell:** *His physical capability to respond in kind.* (Italics in original.)

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<sup>117</sup> *Id.* at 19-20.

<sup>118</sup> David Shoalts, *Shanahan Advocate Larger Ice Surfaces Narrow Confines Cause Injuries*, *Star Says*, THE GLOBE AND MAIL (CANADA), Dec. 12, 1996, at C13; *Smith: Enlarging the Crease Could Cut Hockey Violence*, THE GLOBE AND MAIL (CANADA), Feb. 2, 1983.

<sup>119</sup> James Christie, *Taking Risks On the Job*, THE GLOBE AND MAIL (CANADA), Mar. 18, 1981 (discussing how NHL owners passed up the opportunity to rid hockey of fighting around 1976); James Christie, *Viewpoint NHL Stickhandles Around Problem*, THE GLOBE AND MAIL (CANADA), June 12, 1980 (discussing how the NHL recently affirmed that one-on-one fighting is permitted in the game).

**McMurtry:** *In other words he has to make an assessment as to whether he can hold his own with this player in a fight?* (Italics in original.)

**Campbell:** *I think he has to keep that in mind all the time.* (Italics in original.)

**McMurtry:** *He has to keep that in mind all the time?* (Italics in original.)

**Campbell:** *Yes.* (Italics in original.)

**McMurtry:** All right, continue.

**Campbell:** So if he decides that he would sooner get himself an equivalent penalty he can respond in kind, if he wishes.

**McMurtry:** Right.

**Campbell:** Or if he decides that it would be smarter for him to abstain and let the other fellow take the penalty, that is great; that is his choice.

**McMurtry:** *You just told me he would not have a penalty.* (Italics in original.)

**Campbell:** *I didn't say that at all.* I said it might not be an infraction of a character that would warrant either a game misconduct or a misconduct penalty, either one, for inciting, I don't know. That is a matter of judgment on the part of the officials. And the officials, believe me, are men who have had quite a lifetime of experience in this field. (Italics in original.)

**McMurtry:** Mr. Campbell, I don't pretend to be as knowledgeable about the NHL as you are, but I have watched NHL games for at least 25 years and I have never seen that rule called.

**Campbell:** *Well, let me put it this way: it is not surprising to me that you have not. It is a rule . . .* (Italics in original.)<sup>120</sup>

69. Similarly, in a Congressional hearing, then NHL President John Zeigler and Representative Henry J. Hyde entered into a colloquy explaining why the NHL is so violent compared to Olympic hockey:

**Hyde:** You have stated that you subscribe to the theory that roughness is a basic part of the game, and that occasional fights occur as an outlet for pent-up emotions. How do you reconcile this with the fact that the Olympic hockey games, which were magnificent, were played without such an outlet?

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<sup>120</sup> McMurtry, *supra*, at 20-21.

**Ziegler:** First of all, there were some outlets, if you will examine, when there were confrontations and the outlets were this gesturing when they came together, and there were a number. Second, they were playing on a bigger ice surface, and you do not have the intensity of competition on a bigger ice surface. You have much more time to execute. You play a different game. You do not use the boards as much as part of defense and offense.<sup>121</sup>

**F. The NHL Has Known that Its Violent Construct Has Created and Will Continue to Create Imminent Risks of Head Trauma to NHL Players Which Result in Devastating and Long-Term Negative Health Effects**

**1. The Concussion Problem Is Endemic to the NHL**

70. According to NHL.com, a search for the term “concussion” generates 6,807 “news” articles as of April 9, 2014.

71. In 1998, a Canadian news article documented how frequent concussions are for NHL players, stating:

Concussions have become an epidemic in the NHL over the past several years, striking everyone from marquee players to fourth-line checkers. The rash of concussions has led the NHL to try to improve prevention and diagnosis of concussions and has awakened many players and coaches.

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According to statistics provided by the NHL, 60 players had concussions last season during the regular season and the playoffs. As of early February this season, 56 players already had received concussions.<sup>122</sup>

72. The American Association of Neurological Surgeons defines a concussion as a clinical syndrome characterized by an immediate and transient alteration in brain function,

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<sup>121</sup> *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives on H.R. 7903: Excessive Violence in Professional Sports*, 9th Cong. 134-163 (1980).

<sup>122</sup> Maureen Delany, *NHL struggles with efforts to prevent concussions Bell Ringers / They don't just make players see stars. They can end a season, or even a career*, THE GLOBE AND MAIL (CANADA), Mar. 24, 1998, at S11.

including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma.

73. The injury generally occurs when the head either accelerates rapidly and then is stopped, or is rotated rapidly. The results frequently include, among other things, confusion, blurred vision, memory loss, nausea, and sometimes unconsciousness.

74. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

75. According to neurologists, once a person suffers a concussion, the person is up to four (4) times more likely to sustain a second one. Additionally, after suffering even a single concussion, a lesser blow may cause the injury, and the injured person requires more time to recover.

76. Clinical and neuropathological studies by some of the nation's foremost experts have demonstrated that multiple concussions sustained during an NHL player's career can cause severe cognitive problems such as depression and early-onset dementia.

77. Repeated head trauma can also result in so-called "Second Impact Syndrome," in which re-injury to a person who has already suffered a concussion triggers swelling that the skull cannot accommodate.

78. Repeated instances of head trauma also frequently lead to Chronic Traumatic Encephalopathy ("CTE"), a progressive degenerative disease of the brain.

79. CTE involves the build-up of toxic proteins in the brain's neurons. This build-up result in a condition whereby signals sent from one cell to thousands of connecting cells in various parts of the brain are not received, leading to abnormal and diminished brain function.

80. CTE is found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional hockey players who have a history of head injury.

81. This head trauma, which includes multiple concussions, triggers progressive degeneration of the brain tissue. These changes in the brain can begin months, years, or even decades after the last concussion or the end of active athletic involvement. The brain degeneration is associated with memory loss, confusion, impaired judgment, paranoia, impulse-control problems, aggression, depression, and eventually progressive dementia.

82. In a study at the Boston University Center for the Study of Traumatic Encephalopathy and the Veterans Affairs Boston Healthcare System, in collaboration with the Sports Legacy Institute, neuropathologists confirmed CTE in four deceased NHL players who died after exhibiting signs of degenerative brain disease.

83. There are many other documented examples of well-known players who have suffered and continue to suffer head trauma as a result of the violence encouraged and created by the NHL, as described herein.

## **2. Scientists Warn Against the Concussion Problem While the NHL Continues Profiting from Extreme Violence**

84. For almost a century, while unnecessary violence, including brutal fighting, has permeated NHL games, the NHL has been on notice that multiple blows to the head can lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and CTE and its related symptoms. There have been legions of studies throughout the eras proving these negative health consequences.

85. CTE was first addressed in a 1928 article written by pathologist Harrison Martland, discussing “Punch Drunk” syndrome in a group of athletes exposed to repetitive brain

trauma (the “Martland study”). The article was published in *The Journal of the American Medical Association* (“JAMA”).<sup>123</sup>

86. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease. There were many subsequent other studies published regarding the dangers of athletic head trauma.

87. For example, in 1937, the *U.S. Naval Medicine Bulletin* published a paper titled *Dementia Pugilistica*.<sup>124</sup> In 1941, *JAMA* published an article titled *The Medical Aspect of Boxing*.<sup>125</sup> In 1952, *JAMA* published a study of encephalopathic changes in those suffering repeated blows to the head, focusing on professional boxers.<sup>126</sup> That same year, an article published in the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (*i.e.*, recommending that players cease to play football after receiving their third concussion).

88. In 1956, the *Journal of Neurology, Neurosurgery and Psychiatry* published a paper titled *Diffuse Degeneration of the Cerebral White Matter in Severe Dementia Following Head Injury*.<sup>127</sup> In 1959, the *Journal of Mental Science* published a paper titled *Observations on*

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<sup>123</sup> Harrison S. Martland, M.D., *Punch Drunk*, 91 JAMA 1103 (1928).

<sup>124</sup> J. A. Millspaugh, *Dementia Pugilistica*, 35 U.S. NAVAL MED. BULLETIN 297 (1937).

<sup>125</sup> Ernst Joki, M.D., *The Medical Aspect of Boxing*, 117 JAMA 25 (1941)

<sup>126</sup> Ewald W. Busse, M.D., Albert J. Silverman, M.D., *Electroencephalographic Changes in Professional Boxers*, 149 JAMA 1522 (1952).

<sup>127</sup> Sabina J. Strich, *Diffuse Degeneration of the Cerebral White Matter in Severe Dementia Following Head Injury*, 19 J. NEUROL., NEUROSURG. AND PSYCHIATRY 163 (1956).

*the Pathology of Insidious Dementia Following Head Injury*.<sup>128</sup> In 1959, the *Canadian Medical Association Journal* published a study titled *Puck Aneurysm*, in which it stated:

Although it is well known that to be struck in the head by a hockey puck cannot be an entirely benign event, it is perhaps insufficiently appreciated that a regulation hockey puck weights 165 grams and may travel at a velocity in excess of 120 feet per second. When such a missile strikes the head, delayed as well as immediate sequelae cannot be wholly unexpected. In the cases reported here, it may be felt that the patients got off lightly, but on the other hand, it can be pointed out that in both instances the injuries could have been prevented by the wearing of a suitably designed protective helmet.<sup>129</sup>

89. In 1962, *JAMA* published an article titled *Protection of the Head and Neck in Sports*, in which it concluded, “Helmets for use in one sport might not be satisfactory for another. Individual design of the helmet for each sport is mandatory if maximum protection is to be obtained.”<sup>130</sup> In 1966, the *Journal of Neurology* published a paper titled *Concussion Amnesia*.<sup>131</sup> In 1968, the *Journal of Neurochirurgia* published a paper titled *Brains of Boxers*.<sup>132</sup> In 1968, the *Canadian Medical Association Journal* published a study titled *Severe Brain Injury and Death Following Minor Hockey Accidents: The Effectiveness of the “Safety Helmets” of Amateur Hockey Players*. The study noted the death of NHL player Bill Masterton resulting from head trauma he suffered during an NHL game.<sup>133</sup>

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<sup>128</sup> J.A.N. Corsellis, JB Brierley, *Observations on the Pathology of Insidious Dementia Following Head Injury*, 105 J. MENTAL SCI. 714(1959).

<sup>129</sup> J.S. Campbell, M.D., Pierre Fournier, M.D., D.P. Hill, M.D., *Puck Aneurysm*, 82 CAN. MED. ASS’N J. 923 (1959).

<sup>130</sup> ES Gurdjian, M.D., HR Lissner, M.S., LM Patrick, M.S., *Protection of the Head and Neck in Sports*, 182 JAMA 509 (1962).

<sup>131</sup> C. Miller Fisher, *Concussion amnesia*, 16 NEUROLOGY 826 (1966).

<sup>132</sup> EE Payne, *Brains of boxers*, 5 NEUROCHIRURGIA 173 (1968).

<sup>133</sup> John F. Fekete, M.D., *Severe Brain Injury and Death Following Minor Hockey Accidents*, 99 CAN. MED. ASS’N J. 99 (1968) 1234.





90. The article then concluded:

The ideal protective hockey helmet, therefore, should be able to protect the players against blows and falls. The shell and the suspension apparatus of the helmets should be able to cushion enough of the impact of falls and blows to reduce the transmitted accelerating or decelerating velocity of the head blow by the 30 ft. per second danger threshold found by White and associates, and below the 425 lbs per sq. in. pressure found by Gurdjian. Apparently 30 ft. per second is the upper limit of impact velocity which the human brain can suffer without experiencing cerebral concussion. Likewise, 425 lbs. per sq. in. is the approximate upper limit of pressure which the human skull can withstand without fracture.<sup>134</sup>

91. In 1969, *JAMA* published an article, titled *Ice Hockey Can be Safer*, noting the imminent risk of head trauma to ice hockey players.<sup>135</sup> The article stated:

Physicians have played some role in making the wearing of protective helmets compulsory in amateur hockey on this continent. But we must not presume that this regulation of itself can eliminate serious head injury or death. Patently, not all the helmets in use are sufficient. We must encourage, support, or initiate research to produce more effective equipment.<sup>136</sup>

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<sup>134</sup> *Id.* at 1238.

<sup>135</sup> *Ice Hockey Can be Safer*, 207 *JAMA* 1706 (1969).

<sup>136</sup> *Id.*

92. In 1969, the *British Journal of Psychiatry* published a paper titled, *Organic Psychosyndromes due to Boxing*.<sup>137</sup> In 1969, Anthony Roberts published a study titled *Brain Damage in Boxers: A study of the prevalence of traumatic encephalopathy among ex-professional boxers*.<sup>138</sup>

93. In 1970, *The Lancet* published a paper titled *Retrograde Memory Immediately After Concussion*.<sup>139</sup> In 1970, *Medical & Science in Sports* published an article titled *The effectiveness of a special ice hockey helmet to reduce head injury in collegiate intramural hockey*.<sup>140</sup>

94. In 1973, a disabling and sometimes deadly condition involving the second impact concussion occurring before symptoms of a first concussion was described by R.C. Schneider. This later was coined the “Second Impact Syndrome” in 1984. In 1973, *Psychology Medicine* published a study titled *The Aftermath of Boxing*.<sup>141</sup> In 1974, the *Journal of Brain* published a paper titled, *Cerebral Concussion and Traumatic Unconsciousness: Correlation of experimental*

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<sup>137</sup> John Johnson M.D., M.R.C.P.E., D.P.M., *Organic Psychosyndrome due to Boxing*, 115 THE BRIT. J. PSYCHIATRY 45 (1969).

<sup>138</sup> ANTHONY HERBERS ROBERTS, *BRAIN DAMAGE IN BOXERS: A STUDY OF THE PREVALENCE OF TRAUMATIC ENCEPHALOPATHY AMONG EX-PROFESSIONAL BOXERS*, London: Pitman Med. & Scientific Publ’g Co., Ltd., 1969.

<sup>139</sup> PR Yarnell, S Lynch, *Retrograde Memory Immediately After Concussion*, 295 THE LANCET 863 (1970).

<sup>140</sup> Jess F. Kraus, Bruce D. Andersonm, C.E. Mueller, *The effectiveness of a special ice hockey helmet to reduce head injury in collegiate intramural hockey*, 2 MED. & SCI. IN SPORTS 162 (1970).

<sup>141</sup> J.A.N. Corsellis, CJ Bruton, D Freeman-Browne, *The Aftermath of Boxing*, 3 PSYCHOLOGICAL MED. 270 (1973).

and clinical observations of blunt head injuries.<sup>142</sup> In 1974, *The Lancet* published a study titled *Traumatic Encephalopathy in a Young Boxer*.<sup>143</sup> That same year, *The Lancet* also published a study titled, *Delayed Recovery of Intellectual Function After Minor Head Injury*.<sup>144</sup> In 1975, *The Lancet* published an article titled *Cumulative Effect of Concussion*.<sup>145</sup> In 1975, the *Minerva Medical Journal* published an article titled *Ice Hockey Accidents*, discussing, *inter alia*, concussions.<sup>146</sup> In 1978, *Ageing* published a study titled *Posttraumatic Dementia*.<sup>147</sup> The next year, the *British Journal of Sports Medicine* published a study titled *Association Football Injuries to the Brain: A Preliminary Report*.<sup>148</sup>

95. In 1980, the *Canadian Journal of Applied Sports Science* published an article titled, *Puck Impact Response of Ice Hockey Face Masks*.<sup>149</sup>

96. In sum, as the NHL extracted vast sums of money by selling its violent commodity, numerous studies were published in scores of peer-reviewed journals warning of the

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<sup>142</sup> AK Ommaya, TA Gennarelli, *Cerebral Concussion and Traumatic Unconsciousness: Correlation of Experimental and Clinical Observations of Blunt Head Injuries*, 97 *BRAIN* 633 (1974).

<sup>143</sup> PK Harvey, JN Davis, *Traumatic Encephalopathy in a Young Boxer*, 2 *THE LANCET* 928 (1974).

<sup>144</sup> D Gronwall, P Wrightson, *Delayed Recovery of Intellectual Function After Minor Head Injury*, 304 *THE LANCET* 605 (1974).

<sup>145</sup> D Gronwall, P Wrightson., *Cumulative Effect of Concussion*, 306 *THE LANCET* 995 (1975).

<sup>146</sup> P Muller, K Biener, *Ice Hockey Accidents*, 66 *MINERVA MED.* 1325 (1975).

<sup>147</sup> J.A.N. Corsellis, *Posttraumatic dementia*, 7 *AGING* 125 (1978).

<sup>148</sup> A Tysvaer, O Storli, *Association Football Injuries to the Brain: A Preliminary Report*, 15 *BRIT. J. OF SPORTS MED.* 163 (1981).

<sup>149</sup> RW Nornam, PJ Bishop, MR Pierrynowski, *Puck impact response of ice hockey face masks*, 5 *CAN. J. APPLIED SPORT SCI.* 208 (1980).

dangers of single concussions, multiple concussions, and contact sports-related head trauma from multiple concussions. These studies collectively and conclusively established that:

- (a) repetitive head trauma in contact sports has dangerous long-term effects on the brain;
- (b) post-mortem evidence of CTE was present in numerous cases of boxers and contact-sport athletes;
- (c) there is a relationship between neurologic pathology and the length of the careers of athletes who play contact sports;
- (d) immediate retrograde memory issues occur following concussions;
- (e) mild head injury requires recovery time without risk of subjection to further injury;
- (f) head trauma is linked to dementia; and
- (g) an athlete who suffers a concussion requires significant rest before being subjected to further contact.

97. At the end of 1991, the Colorado Medical Society published concussion research that they had been working on since the death of a high school student from second impact syndrome. The paper outlined clear guidelines on the appropriate response to suspected concussions.

98. According to the Colorado Medical Society guidelines, a Grade I concussion consists of confusion only, Grade II includes confusion and post-traumatic amnesia, and Grades III and IV involve a loss of consciousness. By these guidelines, an athlete who has suffered a concussion may return to sports after having been free of symptoms, both at rest and during exercise, as follows:

(a) Grade I - first concussion: 15 minutes; second concussions: one week.

(b) Grade II - first concussion: one week; second concussions: two weeks (with physician approval).

(c) Grade IIIa (unconscious for seconds) - first concussion: 1 month; second concussions: six months (with physician approval).

(d) Grade IIIb (unconscious for minutes) - first concussion: six month; second concussions: one year (with physician approval).

99. In response to the publication of the Colorado Medical Society guidelines, the NCAA and high school teams almost immediately adopted the new, stricter guidelines on how to care for injured players.

100. In 2000, the *Clinical Journal of Sport Medicine* published an article titled *Risk of Head and Neck Injuries in Ice Hockey with Full Face Shields or Half Face Shields*.

101. In 2001, The International Ice Hockey Federation, in partnership with the Federation Internationale de Football Association Medical Assessment and Research Center and the International Olympic Committee Medical Commission, organized the first International Symposium on Concussion in Sport, and convened in Vienna.

102. Faced with the increasing incidence of concussions and head injuries in ice hockey and other sports, the International Symposium on Concussion in Sport gathered the leading medical experts from all parts of the world and from a wide sampling of different sports, experienced in dealing with sports-related head injuries. The objective of the symposium was to understand, as completely as possible, what actually takes place when severe blows to the head occur, with the goal of eliminating concussions in all sports.

103. One of the papers presented at the first International Symposium on Concussion in Sport 2001, titled *Procedures After Minor Traumatic Brain Injury mTBI In Ice Hockey to Prevent Neurological Sequelae*, noted that, during the 15 years preceding the symposium, the proportion of mTBI (mild traumatic brain injury) to the overall number of injuries in the sport of ice hockey generally increased from 2% to 20%, and in the NHL specifically, increased from 2% in the 1989-1990 season to 8% in 1999-2001 seasons. The authors recommended that any confused player with or without amnesia should be taken off the ice and not be permitted to play again for at least 24 hours.

104. In 2004, the International Symposium on Concussion in Sport reconvened in Prague with the aim of providing recommendations for the improvement of the safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

105. In 2004, the *Clinical Journal of Sport Medicine* published an article titled *Head Injuries Presenting to Emergency Departments in the United States From 1990 to 1999 for Ice Hockey, Soccer, and Football*.<sup>150</sup> The results of the study found:

There were an estimated 17,008 head injuries from ice hockey, 86,697 from soccer, and 204,802 from football that presented to US EDs from 1990 to 1999. The total number of concussions presenting to EDs in the United States over the same period was estimated to be 4820 from ice hockey, 21,715 from soccer, and 68,861 from football. While the rates of head injuries, concussions, and combined concussions/internal head injuries/skull fractures presenting to EDs per 10,000 players were not always statistically similar for all 3 sports in each year data were available, they were usually comparable.<sup>151</sup>

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<sup>150</sup> J. Scott Delaney, *Head injuries presenting to emergency departments in the United States from 1990 to 1999 for ice hockey, soccer, and football*, 14 CLINICAL J. SPORTS MED. 80 (2004.).

<sup>151</sup> *Id.*

106. The study concluded: “While the total numbers of head injuries, concussions, and combined concussions/skull fractures/internal head injuries presenting to EDs in the United States are different for ice hockey, soccer, and football for the years studied, the yearly rates for these injuries are comparable among all 3 sports.”<sup>152</sup>

107. In 2011, the *Clinical Journal of Sports Medicine* published an article titled *Sport-Related Concussions: Knowledge Translation Among Minor Hockey Coaches*.<sup>153</sup> The study investigated minor hockey coaches’ knowledge of sport-related concussions, and found that the majority of coaches correctly recognized and understood the issues related to sports-related concussions.<sup>154</sup>

108. In 2012, the *Clinical Journal of Sport Medicine* published an article titled *Eliminate Head-Checking in Ice Hockey*.<sup>155</sup> The article states:

Although findings have not been universally confirmed or accepted, 8 most studies suggest that multiple concussions can lead to permanent functional impairment as a result of cumulative brain trauma. In most head injuries occurring during athletic activity, there is a significant acceleration, and diffuse damage may occur even if the coverings of the brain are not breached . . .

We feel that the medical profession needs to raise awareness and to advocate for a “no head-checking” rule, for stricter rule enforcement and more vigorous penalization. The proposed “no head-checking rule” should be implemented in all levels of hockey and in all locations where ice hockey is played. Everyone must send the message that there is no role for the head as a target in ice hockey. We simply must have a “no head-checking rule” in all ice hockey.<sup>156</sup>

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<sup>152</sup> *Id.*

<sup>153</sup> Martin Mrazik, et al., *Sport-related concussions: knowledge translation among minor hockey coaches*, 21 CLINICAL J. SPORTS MED. 315 (2011).

<sup>154</sup> *Id.*

<sup>155</sup> Tom Pashby, MD, et al., *Eliminate Head-Checking in Ice Hockey*, 11 CLINICAL J. SPORTS MED. 211 (2001).

<sup>156</sup> *Id.*



109. In 2012, the *Clinical Journal of Sports Medicine* published an article titled *Concussion reporting rates at the conclusion of an intercollegiate athletic career*.<sup>157</sup> The article concludes:

Overall, 49.7% of all respondents (80/161) reported 1 acknowledged, unreported, or potential concussion. The unreported rate was lower than previous high school studies; however, the potentially unrecognized rate remains high and should be clinically concerning. These findings suggest educational interventions targeting collegiate student-athletes should remain and continue to focus on identifying concussion symptoms and dispelling the common misconception that ‘bell ringers’ and ‘dings’ are not concussions.<sup>158</sup>

### **3. The NHL’s Knowledge of Head Trauma Documented Through Media Coverage of NHL Incidents**

110. There are many general and specific reports documenting head trauma to NHL players.

111. For example, in 1978, a Canadian media outlet ran a story on NHL player Rick Martin (“Martin”).<sup>159</sup> Martin played in the NHL from 1971 until 1982.<sup>160</sup> Martin was part of the famous offensive line with fellow Quebec natives called the “French Connection.”<sup>161</sup> In an NHL game, opposing player Dave Farrish (“Farrish”) hooked Martin around his neck from behind and

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<sup>157</sup> Tracy Llewellyn, et al., *Concussion reporting rates at the conclusion of an intercollegiate athletic career*, 24 CLINICAL J. SPORTS MED. 76 (2014).

<sup>158</sup> *Id.*

<sup>159</sup> *Martin suffers concussion Injury revives NHL helmet debate*, THE GLOBE AND MAIL (CANADA), Feb. 14, 1978.

<sup>160</sup> Players: Richard Martin, NHL.com, <http://www.nhl.com/ice/player.htm?id=8449275#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>161</sup> <http://web.archive.org/web/20070810185553/http://www.sabresalumni.com/2001/connection.php3>

kicked Martin's feet out from under him.<sup>162</sup> As a result of Farrish's conduct, Martin hit his head on the ice, was knocked unconscious and went into convulsions.<sup>163</sup> The 1987 article comments that Martin's head trauma could have been mitigated had Martin been wearing a helmet, but quotes then NHL president Zeigler with a countervailing remark, "'The league's position has been and is right now that the wearing of a helmet is up to the individual.'"<sup>164</sup> Despite his conduct, Farrish played in the NHL until 1984 and since his retirement in 2005, has been part of the coaching staff for the NHL.<sup>165</sup>

112. In 1988, the Philadelphia Inquirer ran a story titled *Hazardous Despite a Player's Death, Helmets Were Long Ignored*.<sup>166</sup> The article recounts deaths during NHL games and criticized the NHL's attitude toward player safety:

Although those incidents tended to create an immediate upsurge in the use of helmets, players gradually discarded them. And the NHL stood pat.

In fact, while the NHL ignored the issue, most minor leagues and the governing bodies for intercollegiate and international hockey mandated the use of helmets.

Finally, in 1979 - more than a decade after a death that a helmet almost certainly would have prevented - the NHL made them mandatory. But the league equivocated even then, ruling that any player who had signed a professional contract before June 1 of that year had the option of refusing to wear one.

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<sup>162</sup> *THE consequences of a career [...]; AND WHILE WE'RE AT IT*, The Daily Mail, Jan. 9, 2012, <http://www.highbeam.com/doc/1G1-276641492.html>.

<sup>163</sup> *Id.*

<sup>164</sup> *Martin suffers concussion Injury revives NHL helmet debate*, THE GLOBE AND MAIL (CANADA), Feb. 14, 1978.

<sup>165</sup> Dave Farrish: Toronto Maple Leads – Assistant Coach, <http://www.nhl.com/ice/page.htm?id=26051> (last visited Mar. 28, 2014).

<sup>166</sup> Frank Fitzpatrick, *Hazardous Despite A Player's Death, Helmets Were Long Ignored*, THE INQUIRER, (Jan. 13, 1988), [http://articles.philly.com/1988-01-13/sports/26283417\\_1\\_bill-masterton-helmets-nhl](http://articles.philly.com/1988-01-13/sports/26283417_1_bill-masterton-helmets-nhl).

Had it been so inclined, the NHL could have required helmets immediately in the wake of the Masterton incident. The players, stunned by their colleague's death, seemed to be leaning in that direction.

On Jan. 17, 1968, the NHL Players Association (NHLPA) issued a statement urging the league to adopt mandatory helmet legislation.

Chicago's Stan Mikita, the league's MVP that year, and others began wearing helmets immediately after the death. Blackhawks superstar Bobby Hull admitted that vanity alone had kept him from using a helmet and said that he would consider using one.

The NHL, though, remained unmoved.

Clarence Campbell, the imperious commissioner who refused to lend league sanction to a benefit game for Masterton's family, went so far as to suggest that the death was just one of those things.

"It was a routine accident that could have happened in any hockey game . . . a normal hazard of the occupation," Campbell said in defense of NHL policy. "(Helmets) are optional now, and we think that is the best method of dealing with it."

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Callous as it sounded, Campbell's attitude on helmets was merely reflective of a firmly held belief among league owners that their use was bad for the game.<sup>167</sup>

113. In 2012, *The Daily Mail* ran an article discussing Martin's career, noting:

THE consequences of a career in professional ice hockey may be even worse than previously thought. An autopsy on Rick Martin, a seven-time All-Star and winger with the Buffalo Sabres in the 1970s, who died of a heart attack aged 59, discovered he, too, suffered the degenerative brain disease chronic traumatic encephalopathy.

Martin is the third former NHL player to be found, posthumously, to have the condition, but the first not to play in the role of enforcer. There is no explanation for Martin's illness, although he was victim of one of the sport's most notorious fouls, when Dave Farrish of the New York Rangers hooked his neck from behind and kicked his feet away. Martin, who was not wearing a helmet, hit his head on the ice and went into convulsions.

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<sup>167</sup> *Id.*

Meanwhile, don't forget folks, *Goon*, a film making light of ice hockey's most violent excesses, is in cinemas this week. Coming soon: *Goon 2: The Drooling Years*.<sup>168</sup>

114. In 1987, a Canadian media outlet ran a story on NHL player, Earl Seibert ("Seibert").<sup>169</sup> Seibert played in the NHL from 1931 until 1946.<sup>170</sup> The NHL inducted Seibert into the NHL Hall of Fame in 1963.<sup>171</sup> The article noted that Seibert suffered at least one concussion in 1929 and, subsequently, was the first NHL player to wear a helmet.<sup>172</sup>

115. In 1987, the Associated Press ran a story about NHL player Brad Marsh ("Marsh").<sup>173</sup> Marsh played in the NHL from 1981 until 1993.<sup>174</sup> Marsh was an NHL all-star in his final year.<sup>175</sup> Marsh was in 55 fights in NHL games.<sup>176</sup> The article stated as follows regarding Marsh:

Philadelphia defenceman Brad Marsh will miss about a week of play while recovering from a collision that left him with a concussion and scalp wounds. Marsh, one of the few remaining NHL players to play without a helmet, was

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<sup>168</sup> THE DAILY MAIL, *supra*.

<sup>169</sup> Paul Patton, *Where are they Now? Earl Seibert Hockey*, THE GLOBE AND MAIL (CANADA), Mar. 7, 1987.

<sup>170</sup> *Id.*

<sup>171</sup> *One On One With Earl Seibert*, Hockey Hall of Fame (April 10, 2012), [http://www.hhof.com/htmlSpotlight/spot\\_oneononep196303.shtml](http://www.hhof.com/htmlSpotlight/spot_oneononep196303.shtml).

<sup>172</sup> Paul Patton, *Where are they Now? Earl Seibert Hockey*, THE GLOBE AND MAIL (CANADA), Mar. 7, 1987.

<sup>173</sup> Associated Press, *Around the Rinks*, THE GLOBE AND MAIL (CANADA), Dec. 11, 1987.

<sup>174</sup> Brad Bradley Marsh, Hockey Hall of Fame <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=11026> (last visited on Mar. 28, 2014).

<sup>175</sup> *Id.*

<sup>176</sup> Brad Marsh, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4212> (last visited Mar. 31, 2014).

injured when Cam Neely and Ray Bourque of the Boston Bruins checked him hard against the boards during the first period Tuesday.<sup>177</sup>

116. In 1988, a Canadian media outlet ran a story regarding NHL player Edgar Laprade's hospitalization due to head trauma.<sup>178</sup> Edgar Laprade ("Laprade") played in the NHL from 1945 until 1955.<sup>179</sup> In the incident, opposing player Bill Ezinicki ("Ezinicki") caused Laprade's concussion.<sup>180</sup> Ezinicki played in the NHL from 1944 until 1995,<sup>181</sup> and had the nickname "Wild Bill."<sup>182</sup> The article notes that then NHL president Clarence Campbell concluded that Ezinicki's contact with Laprade was legal.<sup>183</sup> Laprade would later be inducted into the NHL's "Hall of Fame."<sup>184</sup>

117. In 1996, a Canadian media outlet ran an article titled *Comfort, safety clash in NHL helmet debate*, noting a "rash of concussions this season."<sup>185</sup> That same year, a Canadian

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<sup>177</sup> Associated Press, *Around the Rinks*, THE GLOBE AND MAIL (CANADA), Dec. 11, 1987.

<sup>178</sup> Paul Patton, *Where Are They Now? Bill Ezinicki Hockey*, THE GLOBE AND MAIL (CANADA), Jan. 13, 1988.

<sup>179</sup> *Players: Edgar Laprade*, NHL.com, <http://www.nhl.com/ice/player.htm?id=8447326#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>180</sup> Paul Patton, *Where Are They Now? Bill Ezinicki Hockey*, THE GLOBE AND MAIL (CANADA), Jan. 13, 1988.

<sup>181</sup> *Players: Bill Ezinicki*, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446184#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>182</sup> *Three-time Cup winner 'Wild Bill' Ezinicki dies* (Oct. 15, 2012), <http://www.nhl.com/ice/news.htm?id=643484>.

<sup>183</sup> Paul Patton, *Where Are They Now? Bill Ezinicki Hockey*, THE GLOBE AND MAIL (CANADA), Jan. 13, 1988.

<sup>184</sup> *Spotlight Pinnacle, Hockey Hall of Fame*, [http://www.hhof.com/htmlSpotlight/spot\\_pinnaclep199302.shtml](http://www.hhof.com/htmlSpotlight/spot_pinnaclep199302.shtml) (last visited Mar. 28, 2014).

<sup>185</sup> David Shoalts, *Comfort, safety clash in NHL helmet debate*, THE GLOBE AND MAIL (CANADA), Mar. 28, 1996.

media outlet ran an article titled *Concussions just a fact of hockey life*.<sup>186</sup> The article discussed NHL player Dave Gagner (“Gagner”).<sup>187</sup> Gagner played in the NHL from 1984 until 1999.<sup>188</sup> Gagner was in 11 fights in NHL games.<sup>189</sup> The article recounted Gagner’s many concussions suffered in the NHL and his thoughts on the scope of the problem.<sup>190</sup> The article quotes Gagner as follows:

“The hitting isn’t any harder now than it used to be, but I think that players are less concerned with retaliation than they were 10 years ago. Mironov hit me with an elbow that landed right on my right eye. Ten years ago, there would have been a bench-clearing brawl after a hit like that. Now guys won’t risk a 10-game suspension or worse by getting off the bench and going after someone. I guess the league did this to make the game better and for the fans it might be. For us, it’s more dangerous.”<sup>191</sup>

#### 4. The NHL’s Knowledge of Head Trauma to Its Own Icons

118. Although all NHL players face imminent risk of head trauma, many of the NHL’s icons have suffered from notorious issues. There are many examples of head trauma to players through which the NHL has generated billions of dollars.

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<sup>186</sup> Gare Joyce, *Concussions Just a Fact of Hockey Life*, THE GLOBE AND MAIL (CANADA), April 10, 1996.

<sup>187</sup> *Id.*

<sup>188</sup> *Players: Dave Gagner*, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446997> (last visited Mar. 28, 2014).

<sup>189</sup> Dave Gagner, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/693> (last visited Mar. 31, 2014).

<sup>190</sup> Joyce, *supra*.

<sup>191</sup> *Id.*

**a. Gordie Howe's Head Trauma Issues**

119. Gordie Howe ("Howe") is one of the greatest NHL players ever.<sup>192</sup> Howe played in the NHL from 1946 until 1980.<sup>193</sup> Howe's accolades may never be surpassed, even by fellow NHL Hall of Fame inductees.<sup>194</sup> However, Howe was nicknamed "blinky" due to the lasting effects of head trauma he suffered during a game.<sup>195</sup> In 2009, Howe died from the neurodegenerative disease known as "Pick's disease."<sup>196</sup>

**b. Marc Savard's Head Trauma Issues**

120. Marc Savard ("Savard") played in the NHL from 1997 until 2011.<sup>197</sup> Savard was in a total of 3 fights in NHL games.<sup>198</sup> In 2010, Savard was carried off the ice after a collision with opposing player, Matt Cooke ("Cooke").

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<sup>192</sup> See Legends of Hockey, Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p197204&page=bio#photo> (last visited on Mar. 28, 2014).

<sup>193</sup> *Id.*

<sup>194</sup> See John Kresier, *Numbers only start to tell story of Howe's greatness*, (Mar. 29, 2013) <http://www.nhl.com/ice/news.htm?id=662741>.

<sup>195</sup> Larry Schwartz, *Howe kept going and going . . .*, ESPN CLASSIC, [http://espn.go.com/classic/biography/s/Howe\\_Gordie.html](http://espn.go.com/classic/biography/s/Howe_Gordie.html) (last visited on Mar. 28, 2014).

<sup>196</sup> Dan Robson, *The toughest fight of Gordie Howe's life*, SPORTSNET (Dec. 17, 2013) <http://www.sportsnet.ca/hockey/24-7/red-wings-legend-gordie-howes-toughest-fight/>.

<sup>197</sup> *Team: Marc Savard*, NHL.com, <http://bruins.nhl.com/club/player.htm?id=8462118> (last visited on Mar. 28, 2014).

<sup>198</sup> Marc Savard, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/463> (last visited Mar. 31, 2014).





121. In response to Cooke's collision with Savard and in explaining why Cooke was not suspended, NHL Commissioner Gary Bettman stated: "I was very unhappy and upset with that hit'. . . . 'I was more upset there was nothing [in the NHL's rules] to do to punish it.'"<sup>199</sup> Cooke's hit on Savard was characterized as "[a]very surgical hit to the head."<sup>200</sup>

122. Cooke has played in the NHL since 1998.<sup>201</sup> The next year after the hit on Savard, the NHL suspended Cooke for four games for hitting an opposing player from behind and for ten days for elbowing an opposing player in the head.<sup>202</sup> Cooke was in a total of 22 fights in NHL games.<sup>203</sup>

<sup>199</sup> Bob Condor, *Bettman on rule's effect on play, injury prevention*, NHL.com, Mar. 25, 2010, <http://www.nhl.com/ice/news.htm?id=522722>.

<sup>200</sup> James Matheson, *Time for NHL to throw book at Cooke*, EDMONTON JOURNAL (Mar. 21, 2011), <http://www2.canada.com/edmontonjournal/columnists/story.html?id=37ad4c4b-a85c-4e26-9b11-9613cc12cb27>.

<sup>201</sup> Players: Matt Cooke, NHL.com, <http://www.nhl.com/ice/player.htm?id=8465951> (last visited on Mar. 28, 2014).

<sup>202</sup> Kevin Allen, *Matt Cooke suspended for rest of season, first playoff round*, USA TODAY (Mar. 21, 2011), <http://sports.espn.go.com/nhl/news/story?id=6244492>.

<sup>203</sup> Matt Cooke, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/131> (last visited Mar. 31, 2014).

123. After suffering head trauma from his interaction with Cooke, Savard was later hit by other opposing players.<sup>204</sup> Savard has described the daily struggles with the lasting effects of head injuries: “‘I’m still hoping that something happens that I’ll feel a lot better. But if I feel like this, I still couldn’t play.’”<sup>205</sup>

**c. Nick Kypreos’s Head Trauma Issues**

124. In 1999, the Canadian press ran an article regarding NHL player Nick Kypreos (“Kypreos”). Kypreos played in the NHL from 1989 until 1997.<sup>206</sup> Kypreos was in a total of 81 fights in NHL games.<sup>207</sup>



125. Kypreos was a Stanley Cup champion.<sup>208</sup> The 1999 article discusses how, on one occasion, Kypreos suffered a concussion during a game.<sup>209</sup> Instead of going to the hospital,

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<sup>204</sup> Scott Burnside, *Marc Savard’s life still unsettled*, ESPN.com (Jan. 21, 2012), [http://espn.go.com/nhl/story/\\_/id/7487217/boston-bruins-marc-savard-dealing-concussion-issues](http://espn.go.com/nhl/story/_/id/7487217/boston-bruins-marc-savard-dealing-concussion-issues).

<sup>205</sup> *Id.*

<sup>206</sup> Players: Nick Kypreos, NHL.com, <http://bruins.nhl.com/club/player.htm?id=8462118> (last visited on Mar. 28, 2014).

<sup>207</sup> Nick Kypreos, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/914> (last visited Mar. 31, 2014).

Kypreos recounted that he attempted to participate in the subsequent practice. The article notes that there was “no protocol to follow” for NHL players who suffered concussions. In recounting a fight during an NHL game, Kypreos is quoted as saying:

“I lost my helmet and hit my head on the ice.” . . . “It’s like a dream you can’t remember. Within one hour everything started to come back into focus. I was being asked how I was feeling and if I could go back on the ice to finish the game.”<sup>210</sup>

**d. Dennis Vaske’s Head Trauma Issues**

126. Dennis Vaske (“Vaske”) played in the NHL from 1991 to 1999.<sup>211</sup> Vaske was in one fight in an NHL game.<sup>212</sup> Vaske ended his career due to concussions he suffered in the NHL.<sup>213</sup> In one trip to the hospital, Vaske recounted, “[r]iding in that ambulance, I thought my head was going to explode.”<sup>214</sup> Vaske made attempts to continue playing despite the concussions.<sup>215</sup>

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<sup>208</sup> Anthony Jenkins, *Sports broadcaster Nick Kypreos on a new bilingualism*, THE GLOBE AND MAIL (CANADA), May. 2, 2013, <http://www.theglobeandmail.com/globe-debate/sports-broadcaster-nick-kypreos-on-a-new-bilingualism/article11688187/>.

<sup>209</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.17.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.17.html) (last visited Mar. 28, 2014).

<sup>210</sup> *Id.*

<sup>211</sup> Players: Dennis Vaske, NHL.com, <http://www.nhl.com/ice/player.htm?id=8458300> (last visited on Mar. 28, 2014).

<sup>212</sup> Dennis Vaske, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4213> (last visited Mar. 31, 2014).

<sup>213</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.16.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.16.html) (last visited Mar. 28, 2014).

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

**e. Gino Odjick's Head Trauma Issues**

127. Gino Odjick ("Odjick") played in the NHL from 1990 until 2002.<sup>216</sup> Odjick was in a total of 154 fights in NHL games.<sup>217</sup>



128. Odjick was hit in the back of the head by a puck.<sup>218</sup> Odjick subsequently suffered from persistent dizziness and headaches and retired from the NHL.<sup>219</sup>

**f. Dean Chynoweth's Head Trauma Issues**

129. Dean Chynoweth ("Chynoweth") played in the NHL from 1989 until 1998.<sup>220</sup> Chynoweth was in a total of 38 fights in NHL games.<sup>221</sup>

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<sup>216</sup> Players: Gino Odjick, NHL.com, <http://www.nhl.com/ice/player.htm?id=8449961> (last visited Mar. 28, 2014).

<sup>217</sup> Gino Odjick, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/21> (last visited Mar. 31, 2014).

<sup>218</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.18.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.18.html) (last visited mar. 28, 2014).

<sup>219</sup> *Id.*

<sup>220</sup> Players: Dean Chynoweth, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446081#&navid=nhl-search> (last visited Mar. 28, 2014).





130. Chynoweth reportedly suffered 13 concussions during his NHL career.<sup>222</sup>

Chynoweth is quoted as stating the following regarding the head trauma injuries he suffered in the NHL:

“One doctor told me I could probably keep playing but I would have to change my game, less contact, no fighting, but due to lingering symptoms it was not possible. I wouldn’t have wanted to play any other way than the way I played.”<sup>223</sup>

**g. Geoff Courtnall’s Head Trauma Issues**

131. Geoff Courtnall (“Courtnall”) played in the NHL from 1983 to 2000.<sup>224</sup>

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<sup>221</sup> Dean Chynoweth, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/921> (last visited Mar. 31, 2014).

<sup>222</sup> NHL Careers End by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.15.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.15.html) (Mar. 28, 2014).

<sup>223</sup> *Id.*

<sup>224</sup> Players: Geoff Courtnall, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446205#&navid=nhl-search> (last visited Mar. 28, 2014).



132. Courtnall was in a total of 49 fights in NHL games.<sup>225</sup> Courtnall's NHL career ended after taking an elbow to the chin from opposing player Bryan Berard ("Berard") during a game in 1999.<sup>226</sup> The trauma caused Courtnall to suffer a Grade 2 concussion and, subsequently, Courtnall ended his NHL career.<sup>227</sup> Berard, who had already been in the NHL for several years, suffered no repercussions for the elbow during the game.<sup>228</sup> The NHL eventually penalized Berard with a two-game suspension.<sup>229</sup> Berard went on to play for nearly another decade in the NHL.<sup>230</sup> Berard was in a total of 6 fights in NHL games.<sup>231</sup> Berard's NHL career ended when he suffered an extreme eye injury during an NHL game.<sup>232</sup>

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<sup>225</sup> Geoff Courtnall, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/725> (last visited Mar. 31, 2014).

<sup>226</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.14.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.14.html) (last visited Mar. 28, 2014).

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Players: Bryan Berard, NHL.com, <http://www.nhl.com/ice/player.htm?id=8462032#&navid=nhl-search> (last visited Mar. 28, 2014).

**h. Petr Svoboda's Head Trauma Issues**

133. Petr Svoboda ("Svoboda") played in the NHL from 1984 until 2001.<sup>233</sup>



134. In 2000, Svoboda was knocked out by opposing player Shane Doan ("Doan").<sup>234</sup> Svoboda retired 17 months later due to the lingering effects of the head trauma.<sup>235</sup> Svoboda was in a total of 20 fights in NHL games.<sup>236</sup> Doan was a five-year veteran of the NHL when he

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<sup>231</sup> Bryan Berard, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/403> (last visited Mar. 31, 2014).

<sup>232</sup> Nathaniel Vinton, *Former NHL Star Bryan Berard Out to Recover Millions Lost in Financial Scam*, DAILY NEWS (June 30, 2013), <http://www.nydailynews.com/sports/i-team/scammed-ex-nhl-star-berard-fighting-back-article-1.1386771>.

<sup>233</sup> Players: Petr Svoboda, NHL.com, <http://www.nhl.com/ice/player.htm?id=8467510#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>234</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.13.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.13.html) (last visited Mar. 28, 2014).

<sup>235</sup> *Id.*

<sup>236</sup> Petr Svoboda, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/277> (last visited Mar. 31, 2014).



concussed Svoboda.<sup>237</sup> Doan was in a total of 41 fights in NHL games.<sup>238</sup> In 2010, Doan was suspended for three games for hitting the head of opposing player Dan Sexton during a game.<sup>239</sup> Doan had never before been suspended by the NHL. Doan is still playing in the NHL today.<sup>240</sup>

**i. Jeff Beukeboom's Head Trauma Issues**

135. Jeff Beukeboom ("Beukeboom") played in the NHL for 13 seasons.<sup>241</sup> Beukeboom won four Stanley Cups during his NHL career. Beukeboom suffered from at least six concussions.



<sup>237</sup> Players: Shane Doan, NHL.com, <http://www.nhl.com/ice/player.htm?id=8462038#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>238</sup> Shane Doan, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/161> (last visited Mar. 31, 2014).

<sup>239</sup> *Shane Doan suspended 3 games for hit*, ESPN (Mar. 18, 2010), <http://sports.espn.go.com/nhl/news/story?id=5700397>.

<sup>240</sup> Players: Shane Doan, NHL.com, <http://www.nhl.com/ice/player.htm?id=8462038#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>241</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.12.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.12.html) (last visited Mar. 28, 2014).

136. On one occasion in 1998, opposing player Matt Johnson (“Johnson”) sucker punched Beukeboom, which caused a concussion.<sup>242</sup> Beukeboom was playing in an NHL game three months later and suffered yet another concussion.<sup>243</sup> The head trauma left Beukeboom with headaches and trouble concentrating. That would be Beukeboom’s final NHL game. Beukeboom was in a total of 98 fights in NHL games.<sup>244</sup> Johnson was a four-year NHL veteran when he attacked Beukeboom in 1998. The NHL suspended Johnson for 12 games as a result of the attack. Johnson would go on to continue playing in the NHL until 2004. Johnson tallied over 1,500 penalty minutes in his NHL career.<sup>245</sup> Johnson was in a total of 132 fights in NHL games.<sup>246</sup>

**j. Adam Deadmarsh’s Head Trauma Issues**

137. Adam Deadmarsh (“Deadmarsh”) played in the NHL from 1994 until 2003.<sup>247</sup>

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<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> Jeff Beukeboom, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/656> (last visited Mar. 31, 2014).

<sup>245</sup> NHL & WHA Career Leaders and Records for Penalties in Minutes, [http://www.hockey-reference.com/leaders/pen\\_min\\_career.html](http://www.hockey-reference.com/leaders/pen_min_career.html) (last visited Mar. 28, 2014).

<sup>246</sup> Matt Johnson, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/183> (last visited Mar. 31, 2014).

<sup>247</sup> Players: Adam Deadmarsh, NHL.com, <http://www.nhl.com/ice/player.htm?id=8459436#&navid=nhl-search> (last visited Mar. 28, 2014).



138. Deadmarsh suffered a concussion during a fight with opposing player Ed Jovanovski (“Jovanovski”) in 2000. Deadmarsh was in a total of 58 fights in NHL games.<sup>248</sup> In 2002, Deadmarsh was kneed in the head by his own teammate during an NHL practice. Deadmarsh suffered from headaches and dizziness until he retired in 2005. Deadmarsh has been quoted as follows regarding his head trauma:

“I’ve kind of been holding on and hoping and praying that I’d recover from this concussion issue that I have and I haven’t been able to do that” . . . “It’s one of the most frustrating injuries I think you could possibly have from a sports aspect. Unless you have concussions, it’s kind of hard to explain to someone what it feels like, but you know it’s something that’s not supposed to be there.”<sup>249</sup>

139. Jovanovski still plays in the NHL. Jovanovski has been in a total of 50 fights in NHL games thus far.<sup>250</sup> In 1996, the NHL suspended Jovanovski for three games for instigating a

<sup>248</sup> Adam Deadmarsh, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/235> (last visited Mar. 31, 2014).

<sup>249</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.11.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.11.html) (last visited Mar. 28, 2014).

<sup>250</sup> Ed Jovanovski, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/194> (last visited Mar. 31, 2014).

fight during a game.<sup>251</sup> That same year, Jovanovski fought with an opposing player, Bernie Nicholls (“Nicholls”). Nicholls hit Jovanovski with a stick to the head and, as a result, the NHL then suspended Nicholls for two games and issued a \$1,000 fine against Nicholls.<sup>252</sup> Nicholls was in a total of 27 fights in NHL games.<sup>253</sup> In 2009, the NHL suspended Jovanovski for two games for hitting an opposing player in the head with his forearm during a game.<sup>254</sup> The next month, Jovanovski elbowed an opposing player in the head, and the NHL issued another two-game suspension.<sup>255</sup> In 2011, Jovanovski suffered an orbital fracture from colliding with an opposing player.<sup>256</sup>

#### **k. Stu Grimson’s Head Trauma Issues**

140. Stu Grimson (“Grimson”) played in the NHL from 1989 to 2002.<sup>257</sup> Grimson got in over 200 fights in his NHL career.<sup>258</sup>

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<sup>251</sup> Gordon Edes, *Jovanovski Suspended 3 Games*, SUNSENTINEL, Nov. 24, 1996, [http://articles.sun-sentinel.com/1996-11-24/sports/9611240089\\_1\\_jovanovski-panthers-game-misconduct](http://articles.sun-sentinel.com/1996-11-24/sports/9611240089_1_jovanovski-panthers-game-misconduct).

<sup>252</sup> *Nicholls Suspended*, N.Y. TIMES Mar. 1, 1997, <http://www.nytimes.com/1997/03/01/sports/nicholls-suspended.html>.

<sup>253</sup> Bernie Nicholls, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/3757> (last visited Apr. 1, 2014).

<sup>254</sup> *Jovanovski suspended two games*, ESPN (Dec. 9, 2009), <http://sports.espn.go.com/nhl/news/story?id=4727474>.

<sup>255</sup> *League suspends Jovanovski 2 games for elbow*, ESPN (Jan. 11, 2010), <http://www.nhl.com/ice/news.htm?id=513275>.

<sup>256</sup> *Phoenix Coyotes' Ed Jovanovski likely out several weeks with orbital bone fracture*, Arizona Central, (Feb. 18, 2011), <http://www.azcentral.com/sports/coyotes/articles/2011/02/18/20110218phoenix-coyotes-ed-jovanovski-injury.html#ixzz2xGxlclXw>.

<sup>257</sup> Players: Stu Grimson, NHL.com, <http://www.nhl.com/ice/player.htm?id=8447386#&navid=nhl-search> (last visited Mar. 28, 2014).



141. As a result of a fight with opposing player Dave Brown (“Brown”), Grimson required reconstructive cheek surgery.<sup>259</sup> Brown had been suspended for 15 games for hitting opposing player Tomas Sandstrom with his stick, breaking Sandstrom’s jaw and causing a concussion.<sup>260</sup> Brown was in the NHL from 1982 until 1996, and is a Stanley Cup champion.<sup>261</sup> Brown was in a total of 148 fights in NHL games.<sup>262</sup>

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<sup>258</sup> NHL Careers Ended by Concussions, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.10.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.10.html) (last visited Mar. 28, 2014).

<sup>259</sup> *Id.*

<sup>260</sup> *Flyers’ Brown Suspended for 15 Games*, N.Y. TIMES (Nov. 3, 1987), <http://www.nytimes.com/1987/11/03/sports/flyers-brown-suspended-for-15-games.html>.

<sup>261</sup> Players: David Brown, NHL.com, <http://www.nhl.com/ice/player.htm?id=8445712#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>262</sup> Dave Brown, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1038> (last visited Mar. 31, 2014).



142. Grimson suffered from concussion symptoms that forced him to retire.<sup>263</sup> One of Grimson's final moments in the NHL was a fight with an opposing player in 2001.

### **I. The Moore Brothers' Head Trauma Issues**

143. Steve Moore and Mark Moore were brothers who were drafted to play into the NHL.<sup>264</sup> Mark Moore never made it to the NHL due to a concussion he suffered.<sup>265</sup> Steve Moore's career ended due to a fractured neck and concussion he suffered from a blindside by opposing player Todd Bertuzzi ("Bertuzzi") in 2004, as depicted below:



144. Steve Moore's recurring concussion symptoms kept him from returning to the NHL.<sup>266</sup> In 2001, Bertuzzi had been suspended by the NHL for 10 games for participating in a

<sup>263</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.10.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.10.html) (last visited Mar. 28, 2014).

<sup>264</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.9.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.9.html) (last visited Mar. 28, 2014).

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

fight during a game.<sup>267</sup> Bertuzzi still plays in the NHL and has played in over 1,000 games.<sup>268</sup> Bertuzzi has been in 31 fights in NHL games.<sup>269</sup>

**m. Keith Primeau's Head Trauma Issues**

145. Keith Primeau ("Primeau") played in the NHL from 1990 until 2006.<sup>270</sup>



146. Primeau suffered four concussions in the NHL.<sup>271</sup> In 2003, Primeau missed 21 NHL games due to concussions.<sup>272</sup> Primeau was in a total of 81 fights in NHL games.<sup>273</sup> In

<sup>267</sup> *Bertuzzi given 10-game suspension*, CBC SPORTS (Oct. 15, 2001), <http://www.cbc.ca/sports/hockey/bertuzzi-given-10-game-suspension-1.298642>.

<sup>268</sup> Jeremy Laura, *Todd Bertuzzi passes 1000 game milestone*, Examiner.com (Feb. 28, 2011), <http://www.examiner.com/article/todd-bertuzzi-passes-1000-game-milestone>.

<sup>269</sup> Todd Bertuzzi, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/207> (last visited Mar. 31, 2014).

<sup>270</sup> Players: Keith Primeau, <http://www.nhl.com/ice/player.htm?id=8450550#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>271</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.8.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.8.html) (last visited Mar. 28, 2014).

<sup>272</sup> *Id.*

2006, Primeau suffered a concussion at the hands of Alex Perezhogin (“Perezhogin”), who hit Primeau in the head.<sup>274</sup> Primeau subsequently retired from the NHL and has agreed to have his brain donated for use in Boston University’s research effort into the causes of CTE in athletes.<sup>275</sup>

147. In 2004, Perezhogin swung his stick like an axe down on the face of an opposing player in a minor league hockey game.<sup>276</sup> The opposing player went unconscious and started convulsing. The player required twenty stitches in his face, lost teeth and suffered a concussion.<sup>277</sup> Perezhogin was criminally prosecuted by the local authorities and was sentenced to one year probation and fined \$5,000.<sup>278</sup>

#### **n. Matthew Barnaby’s Head Trauma Issues**

148. Matthew Barnaby (“Barnaby”) played in the NHL from 1992 until 2007.<sup>279</sup> Barnaby was in a total of 206 fights in NHL games.<sup>280</sup> In 2007, Barnaby suffered a concussion from a fight with opposing player Josh Gratton (“Gratton”), as depicted below:

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<sup>273</sup> Keith Primeau, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/29> (last visited Mar. 31, 2014).

<sup>274</sup> *Flyers’ Primeau retires because of lingering concussion*, ESPN (Sept. 15, 2006), <http://sports.espn.go.com/nhl/news/story?id=2587486>.

<sup>275</sup> *Retired NHL Star Keith Primeau to Donate Brain Upon Death to Center for the Study of Traumatic Encephalopathy* (Apr. 3, 2009), <http://www.bu.edu/news/2009/04/03/retired-nhl-star-keith-primeau-to-donate-brain-upon-death-to-center-for-the-study-of-tra>.

<sup>276</sup> *Perezhogin charged after baseball-like swing* (Aug. 26, 2004), <http://sports.espn.go.com/nhl/news/story?id=1868300>.

<sup>277</sup> *Id.*

<sup>278</sup> *Sports Shorts*, THE STAR-LEDGER (June 8, 2005), at S74.

<sup>279</sup> Players: Matthew Barnaby, NHL.com, <http://www.nhl.com/ice/player.htm?id=8459019#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>280</sup> Matt Barnaby, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/82> (last visited Mar. 31, 2014).





149. Barnaby retired later that year due to the loss of vision in his left eye.<sup>281</sup> Gratton was in a total of 44 fights in NHL games.<sup>282</sup>

**o. Mike Richter's Head Trauma Issues**

150. Mike Richter ("Richter") played in the NHL from 1989 until 2003.<sup>283</sup> The NHL inducted Richter into its "Hall of Fame" in 2008.<sup>284</sup> Richter suffered from two concussions in eight consecutive months – one of which was caused by a puck to his face mask and another which was caused by a knee to his head.<sup>285</sup>

<sup>281</sup> *NHL Careers Ended by Concussions*, SI.COM [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.7.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.7.html) (last visited Mar. 28, 2014).

<sup>282</sup> Josh Gratton, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1526> (last visited Mar. 31, 2014).

<sup>283</sup> Players: Mike Richter, NHL.com, <http://www.nhl.com/ice/player.htm?id=8450833#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>284</sup> United States Hockey Hall of Fame Museum, Our Enshrinees, <http://www.ushockeyhall.com/enshrinees.cfm> (last visited Mar. 28, 2014).

<sup>285</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.6.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.6.html).



**p. Scott Stevens's Head Trauma Issues**

151. Scott Stevens ("Stevens") played in the NHL from 1982 until 2004.<sup>286</sup> Stevens was in 111 fights in NHL games.<sup>287</sup> Stevens was hit in the head by a slapshot by an opposing player in 2003, causing a concussion.<sup>288</sup> Stevens retired the next year due to post-concussion syndrome.<sup>289</sup>

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<sup>286</sup> Players: Scott Stevens, NHL.com, <http://www.nhl.com/ice/player.htm?id=8451715#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>287</sup> Scott Stevens, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/173> (last visited Mar. 31, 2014).

<sup>288</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.5.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.5.html) (last visited Mar. 28, 2014).

<sup>289</sup> *Id.*



**q. Pat LaFontaine's Head Trauma Issues**

152. Pat LaFontaine ("LaFontaine") played in the NHL from 1983 until 1998.<sup>290</sup> LaFontaine suffered from six concussions. LaFontaine was in a total of 2 fights in NHL games.<sup>291</sup>



<sup>290</sup> Players: Pat LaFontaine, NHL.com, <http://www.nhl.com/ice/player.htm?id=8448626#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>291</sup> Pat LaFontaine, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4223> (last visited Mar. 31, 2014).

153. LaFontaine was once knocked unconscious by a hit from an opposing player, James Patrick (“Patrick”).<sup>292</sup> Patrick was in a total of 12 fights in NHL games.<sup>293</sup> LaFontaine collided with another player, causing a concussion. LaFontaine later hit his head on the ice and was knocked out by a hard check from opposing player, Francois Leroux (“Leroux”). Leroux played in the NHL from 1988 until 1998.<sup>294</sup> In 1996, Leroux fought an opposing player in a game and received a penalty for having had taped knuckles.<sup>295</sup> Leroux was in a total of 52 fights in NHL games.<sup>296</sup>

154. LaFontaine recounted his head trauma:

A neurologist at the Mayo Clinic asked me, “Did it feel like someone came along and ripped all the motivation and personality out of you?” That was exactly what happened to me . . . I remember being scared because for the first month after my fifth concussion, I was very depressed at times. I wouldn't want to come out of my room. My wife was really scared because the littlest things would set me off.<sup>297</sup>

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<sup>292</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.4.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.4.html) (last visited Mar. 28, 2014).

<sup>293</sup> James Patrick, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/10049> (last visited Mar. 31, 2014).

<sup>294</sup> Players: Francois Leroux, NHL.com, <http://www.nhl.com/ice/player.htm?id=8448822#&navid=nhl-search> (last visited Mar. 28, 2014).

<sup>295</sup> WIKIPEDIA, [http://en.wikipedia.org/wiki/Francois\\_Leroux](http://en.wikipedia.org/wiki/Francois_Leroux) (last visited Mar. 27, 2014).

<sup>296</sup> Francois Leroux, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/732> (last visited Mar. 31, 2014).

<sup>297</sup> *NHL Careers Ended by Concussions*, SI.COM, [http://sportsillustrated.cnn.com/multimedia/photo\\_gallery/1103/nhl-careers-ended-by-concussions/content.4.html](http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.4.html) (last visited Mar. 28, 2014).



155. The NHL inducted LaFontaine into its “Hall of Fame” after he retired due to the effects of his repeated head trauma.<sup>298</sup>

**r. Chris Pronger’s Head Trauma Issues**

156. Chris Pronger (“Pronger”) played in the NHL from 1993 until 2012.<sup>299</sup> In 2000, Pronger took a stick to his eye during a game.<sup>300</sup>



157. Pronger returned several games later and was hit hard into the boards.<sup>301</sup> Attempting to play two games after that, Pronger was unable to play due to the effects of the concussion he had sustained.<sup>302</sup> Pronger was in a total of 21 fights in NHL games.<sup>303</sup>

<sup>298</sup> Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?type=Player&mem=P200302&list=ByName> (last visited, Mar. 28, 2014).

<sup>299</sup> <http://flyers.nhl.com/club/player.htm?id=8459424> (last visited Mar. 27, 2014).

<sup>300</sup> Adam Kimelman, *Pronger to miss at least 2-3 weeks with eye injury*, NHL.COM (Oct. 24, 2011) <http://www.nhl.com/ice/news.htm?id=597339> (last visited Mar. 27, 2014).

<sup>301</sup> Sean Leahy, *Chris Pronger out for season with severe post-concussion syndrome*, YAHOO SPORTS, [http://sports.yahoo.com/nhl/blog/puck\\_daddy/post/chris-pronger-out-for-season-with-severe-post-concussion-syndrome?urn=nhl,wp19988](http://sports.yahoo.com/nhl/blog/puck_daddy/post/chris-pronger-out-for-season-with-severe-post-concussion-syndrome?urn=nhl,wp19988) (Dec. 15, 2008).

<sup>302</sup> *Id.*

**s. Paul Kariya's Head Trauma Issues**

158. Paul Kariya ("Kariya") played in the NHL from 1994 until 2010.<sup>304</sup> Kariya was an NHL all-star,<sup>305</sup> a team captain,<sup>306</sup> and achieved numerous accolades during his tenure, including the Lady Byng Trophy for the NHL's most gentlemanly player.<sup>307</sup> Kariya scored over 400 goals in his NHL career.<sup>308</sup> Kariya had an illustrious amateur career, receiving the award for the top collegiate hockey player in 1993, winning Olympic metals, including the gold medal in 2002 at the Salt Lake City Winter Olympics.<sup>309</sup>

159. Kariya ended his NHL career due to the negative effects of head trauma he suffered in the NHL. In one instance, Kariya suffered a blindside hit from opposing player Gary Suter ("Suter").<sup>310</sup>

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<sup>303</sup> Chris Pronger, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/395> (last visited Mar. 31, 2014).

<sup>304</sup> Career Stats: Paul Kariya, THE SPORTS NETWORK, <http://www.tsn.ca/nhl/teams/players/bio/?id=1258>.

<sup>305</sup> *Id.*

<sup>306</sup> Larry Mahoney, *Kariya decides: return to Maine*, Bangor Daily News (Aug. 13, 1993), <http://news.google.ca/newspapers?id=J20zAAAAIBAJ&sjid=gjgHAAAAIBAJ&pg=3930,332333&dq=paul+kariya&hl=en>

<sup>307</sup> Career Stats: Paul Kariya, THE SPORTS NETWORK, <http://www.tsn.ca/nhl/teams/players/bio/?id=1258>.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> Ira Podell, *Long overdue, NHL set to eliminate hits to head*, USA Today (Mar. 19, 2010), [http://usatoday30.usatoday.com/sports/hockey/nhl/2010-03-19-1441696908\\_x.htm](http://usatoday30.usatoday.com/sports/hockey/nhl/2010-03-19-1441696908_x.htm)



The NHL suspended Suter for four games.<sup>311</sup> Suter played in the NHL from 1985 until 2002, for a total of over 1,000 games.<sup>312</sup> In 1989, Suter suffered a broken jaw during a game.<sup>313</sup> In 1990, Suter was arrested for assaulting a police officer.<sup>314</sup> Suter was prosecuted, pled to the charges, and paid a fine of \$8,520.<sup>315</sup> Suter had been accused of intentionally trying to injure Wayne

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<sup>311</sup> Elliot + Teaford, *Cross-check on Kariya Costs Suter Four Games*, L.A. Times, Feb. 4, 1998, <http://articles.latimes.com/1998/feb/04/sports/sp-15396>.

<sup>312</sup> Career Stats: Gary Suter, THE SPORTS NETWORK, <http://www.tsn.ca/nhl/teams/players/bio/?id=623>.

<sup>313</sup> *Flames' Suter can't grin, but he bears it*, Record-Journal, May 14, 1989, <http://news.google.com/newspapers?id=pFNIAAAAIBA&sjid=agENAAAAIBA&pg=1248,3540428>

<sup>314</sup> *Suter faces trial*, Dubuque Telegraph-Herald, Aug. 1, 1990, p. 1B, <http://news.google.com/newspapers?id=sllFAAAAIBA&sjid=3bsMAAAAIBA&pg=4840,241483>

<sup>315</sup> *Suter agrees to \$8,520 fine*, Telegraph Herald, Feb. 12, 1991, <http://news.google.com/newspapers?id=sWxF AAAAIBA&sjid=XLwMAAAAIBA&pg=5571,2088236>

Gretzky during a Canada Cup game.<sup>316</sup> In 1998, Suter signed a three-year contract worth \$10 million.<sup>317</sup> The NHL inducted Suter into its “Hall of Fame” in 2011.

160. In 1996, an opposing player hit Kariya in the head with an elbow during an NHL game, concussing Kariya.<sup>318</sup> The player was not penalized during the game but was subsequently suspended by the NHL.<sup>319</sup> Kariya missed two games because of the concussion.<sup>320</sup>

161. In 2003, Kariya suffered a concussion from a hit from an opposing player during an NHL game.<sup>321</sup> Kariya laid on the ice motionless and had to be helped to the locker room.<sup>322</sup> Kariya then returned to the game.<sup>323</sup>

162. Kariya suffered from headaches and short term memory loss.<sup>324</sup> Kariya has been an outspoken critic of the NHL, stating in interviews:

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<sup>316</sup> *Suter’s longest night*, Milwaukee Journal, Sept. 17, 1991, p. C2, <http://news.google.com/newspapers?id=4aIaAAAAIIBAJ&sjid=QCwEAAAAIIBAJ&pg=6809,969422>

<sup>317</sup> Tim Sassone, *Striking gold out west Sharks sign ex-Hawk Suter for 3 years, \$10 million*, Daily Herald, July 2, 1998, – via Highbeam<http://www.highbeam.com/doc/1G1-68946874.html>

<sup>318</sup> *Kariya to miss 2 games*, Lodi News-Sentinel, Nov. 15, 1996, at 22, <http://news.google.ca/newspapers?id=4dczAAAAIIBAJ&sjid=ViEGAAAAIIBAJ&pg=5528,1864571&dq=paul+kariya&hl=en>.

<sup>319</sup> *Last Word in Sports, Toronto, Maple Leafs*, Observer-Reporter, Nov. 15, 1996, at C4, <http://news.google.ca/newspapers?id=CHReAAAAIIBAJ&sjid=3WENAAAAIIBAJ&pg=6720,2484324&dq=paul+kariya&hl=en>.

<sup>320</sup> *Kariya to miss 2 games*, Lodi News-Sentinel, Nov. 15, 1996, at 22, <http://news.google.ca/newspapers?id=4dczAAAAIIBAJ&sjid=ViEGAAAAIIBAJ&pg=5528,1864571&dq=paul+kariya&hl=en>.

<sup>321</sup> Sherry Skalko, *Kariya shows character in Game 6*, ESPN.com, June 8, 2003, <http://sports.espn.go.com/nhl/playoffs2003/story?id=1564873>.

<sup>322</sup> *Id.*

<sup>323</sup> Damian Cristodero, *Kariya toughs out rough Stevens hit*, St. Petersburg Times, July 9, 2003, [http://www.sptimes.com/2003/06/09/Sports/Kariya\\_toughs\\_out\\_rou.shtml](http://www.sptimes.com/2003/06/09/Sports/Kariya_toughs_out_rou.shtml).



“The thing I worry about is that you’ll get a guy who is playing with a concussion, and he gets hit, and he dies at centre ice.” . . .

“There’s too much of a lack of respect players have for one another . . . . If the league wants to stop that kind of conduct, it will have to punish players . . . . Ten-game suspensions . . . and more, have to be brought back to help wake up players.”

“There probably isn’t a player in the league who hasn’t had a concussion.”<sup>325</sup>

**t. The Lindros Brothers’ Head Trauma Issues**

163. Eric and Brett Lindros were brothers who played in the NHL.



164. Eric Lindros was the NHL MVP in 1995 and a 2002 Olympic gold medal winner.<sup>326</sup> Eric Lindros suffered eight concussions from 1998 through 2005, which eventually

<sup>324</sup> Joe Lapointe, *Hockey; Kariya Is Haunted by Next Big Hit*, N.Y. Times, Oct. 6, 1998, <http://www.nytimes.com/1998/10/06/sports/hockey-kariya-is-haunted-by-next-big-hit.html>.

<sup>325</sup> Randy Starkman, *Kariya retires, expresses worry for hockey’s future*, THE TORONTO STAR (June 29, 2011), [http://www.thestar.com/sports/hockey/2011/06/29/kariya\\_retires\\_expresses\\_worry\\_for\\_hockeys\\_future.html](http://www.thestar.com/sports/hockey/2011/06/29/kariya_retires_expresses_worry_for_hockeys_future.html).

<sup>326</sup> Eric Lindros Official Website, <http://www.ericlindros.ca/bio> (last visited Mar. 27, 2014).

led to his retirement in 2007.<sup>327</sup> Eric Lindros' former team, the Philadelphia Flyers, downplayed the seriousness of his concussion condition.<sup>328</sup>

165. Brett Lindros retired two years after playing in the NHL.<sup>329</sup> Brett Lindros had sustained numerous concussions by the age of 20 and is quoted as stating:

“What was scary for me was each time it took longer to resolve -- my last concussion before my 20th birthday took eight or nine weeks. . . . Sometimes I had memory loss on the bench.”<sup>330</sup>

166. A Canadian news source noted Brett Lindros' outspoken views on the issue of concussions.<sup>331</sup> Brett Lindros stated: “It's every kid's dream to play in the NHL . . . My dreams have basically been shattered.”<sup>332</sup> The article went on to note:

Although Lindros's concussions at the pro level are well documented, he said he wasn't sure how many he might have suffered during his junior career with the Kingston Frontenacs of the Ontario Hockey League.<sup>333</sup>

167. The news source also interviewed coaches and management from Brett Lindros' NHL team, which noted the frequency of concussions and the NHL's willful disregard of the

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<sup>327</sup> *Eric Lindros retiring from NHL: Report*, Cbc SPORTS (Nov. 6, 2007), <http://www.cbc.ca/sports/hockey/eric-lindros-retiring-from-nhl-report-1.691592> (last visited Mar. 27, 2014).

<sup>328</sup> Alexander Hecht, *Article, Legal and Ethical Aspects of Sports-Related Concussions: The Merrill Hoge Story*, 12 Seton Hall J. Sports & Ent. L. 17, 43-44 (2002).

<sup>329</sup> Gerald Eskenazi, *NHL PLAYOFFS; Brett Lindros Calls It Quits*, N.Y. TIMES, (May 2, 1996), <http://www.nytimes.com/1996/05/02/sports/nhl-playoffs-brett-lindros-calls-it-quits.html> (last visited Mar. 27, 2014).

<sup>330</sup> *Id.*

<sup>331</sup> Robert MacLeod, *Brett Lindros Ends Career Concussion-prone Islander Heeds Brain Damage Warning*, THE GLOBE AND MAIL (CANADA) (May 2, 1996).

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

problem.<sup>334</sup> For instance, Mike Milbury, the team's general manager and coach, stated: "And I think not only do we have to think how to treat a concussion, you have to think more in terms of preventive measures. It used to be in old-time hockey you'd take a hit, you'd get your bell rung and you'd go right back out there. Obviously, we've got to rethink that."<sup>335</sup>

168. After retirement, Eric Lindros was also vocal about his views on the concussion problems. In fact, Eric Lindros started a call to action in the ice hockey community, including through his association with the Ontario Brain Injury Association.<sup>336</sup> A Canadian news source quoted Eric Lindros as stating as follows:

It's time to understand that we have a problem . . . We just don't want anyone to go through this again. . . . You cannot fix a brain, that's something I had to learn. It's not like a shoulder or a knee. . . Hockey in an old sport. It's the old-school boys and an old way of thinking. We have to change that thinking a little bit. I bought into it, I wanted to be a tough guy. But it didn't do me any good. That's what came home to me obviously . . . my brother can't play hockey any more . . . Hopefully, other kids won't have to go through this frustration and a shortened dream of playing in the league. . . . The lack of response from the hockey community has frustrated me<sup>337</sup>

169. Another Canadian news article discussed the outreach on the NHL's concussion problem by the Lindros family.<sup>338</sup> The article noted how different the NHL is from other elite ice hockey organizations in other parts of the world in its stance on concussions: "In European hockey, historically, if a player has a concussion, he's automatically out three weeks. That seems

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<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> Lynda Dugdale, *Concussions Grave Problem, Teary Lindros Says*, THE GLOBE AND MAIL (CANADA) (Aug. 28, 1997).

<sup>337</sup> *Id.*

<sup>338</sup> James Christie, *Alliance Advocates Need for Sport Safety; Lindros's Father Serves As Adviser; Urges More Information on Injuries*, THE GLOBE AND MAIL (CANADA) (June 23, 2000).

bizarre to North Americans.”<sup>339</sup> The Lindros family criticized the NHL’s stance on concussions, which involved “baseline testing”:

But you can return to baseline and still be concussed . . . Not all teams rest players for the same period of time as it’s taken them to lose the symptoms of concussion. Some teams are knowledgeable, others ignore them [symptoms] as if they just didn’t happen.<sup>340</sup>

170. According to sources quoted in the article, 9% of all ice hockey players from the junior level and upward suffer one or more concussions in their careers.<sup>341</sup> The article went on to note that, from 1976 to 1996, “62 Canadian hockey players had landed in wheelchairs for life with catastrophic neck injuries.”<sup>342</sup> A physician interviewed further commented:

[I]n the 1980s, the rate was four paralyses per year . . . In the 1990s, it dropped to two per year. We hope it’s cut in half again in this decade. But what has grown in the 1990s is concussions.<sup>343</sup>

#### **u. Tony Granato’s Head Trauma Issues**

171. Tony Granato (“Granato”) played in the NHL from 1988 until 2001.<sup>344</sup> During a game in 1996, Granato suffered a hard hit, which resulted in head trauma that caused swelling and bleeding of his brain.<sup>345</sup> Complaining of severe headaches, he checked into the hospital a

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<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=10553> (last visited Mar. 27, 2014).

<sup>345</sup> Lisa Dillman, *Head Injury Puts Kings’ Granato Into Hospital*, LOS ANGELES TIMES (Jan. 31, 1996)

few days later.<sup>346</sup> He was forced to have brain surgery to remove an abnormal collection of blood in his left temporal lobe.<sup>347</sup> Granato was in a total of 4 fights in NHL games.<sup>348</sup>

**G. Despite Knowledge of the Imminent Risk of Head Trauma and Its Devastating and Long-Term Negative Health Effects, the NHL Has Failed to Warn and Adequately Protect Its Players**

172. The NHL publicly acknowledges that its management are “the caretakers” of its players,<sup>349</sup> and that the NHL has to “do everything possible to protect [its] players.”<sup>350</sup> NHL deputy commissioner William L. Daly stated at a congressional hearing, “[T]he National Hockey League considers the safety of our Players to be a top priority. . . the National Hockey League has been – and will remain – absolutely committed to promoting the safety of its Players.”<sup>351</sup> Yet NHL players had the option of not wearing a helmet until 1979.<sup>352</sup> Many helmets that have

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<sup>346</sup> *Id.*

<sup>347</sup> Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=10553> (last visited Mar. 27, 2014).

<sup>348</sup> Tony Granato, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/478> (last visited Mar. 31, 2014).

<sup>349</sup> Dan Rosen, *New concussion protocol goes into effect tonight*, NHL.com (Mar. 16, 2011), <http://www.nhl.com/ice/news.htm?id=556289>.

<sup>350</sup> *Concussion Syndrome Rocks NHL League Puts Study on Fast Track*, WINNIPEG FREE PRESS, Apr. 2, 1998, at C3.

<sup>351</sup> STATEMENT OF WILLIAM L. DALY BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON COMMERCE, REGARDING CONCUSSIONS IN SPORTS, Submitted in connection with testimony on March 13, 2014.

<sup>352</sup> James Duplacey, THE OFFICIAL RULES OF HOCKEY: AN OFFICIAL PUBLICATION OF THE NATIONAL HOCKEY LEAGUE 46 (NHL Enterprise, Inc. 2001) (describing the June 1, 1979 NHL legislation that made the wearing of a helmet mandatory for any player signing an NHL contract after June 1, 1979. However, the legislation grandfathered in players who were members of the NHL prior to that date, providing that the use of a helmet was voluntary for them.).

been worn are not safe.<sup>353</sup> NHL goalies didn't wear a full protective mask covering until 1959.<sup>354</sup>

173. Academics have also criticized the NHL as being in a "state of denial when it comes to concussion management."<sup>355</sup> As one commentator noted: "[P]layers were evaluated at the bench. This was grossly inadequate as players can easily wave the trainer away and shrug off the immediate effects of a head shot."<sup>356</sup> Another commentator has noted that "it took time before the intransigent NHL ordered the use of helmets for new players coming into the league since 1979."<sup>357</sup>

174. In a 2012 academic article, the author states as follows regarding the NHL's concussion policies:

One change in policy implemented by the NHL to combat the recent concussion epidemic included the revision of its concussion management protocols. First, a doctor, rather than a trainer, must make immediate return to play decisions. Second, immediate examinations to detect whether an athlete had suffered a concussion must occur in a quiet room, free from distractions, as opposed to on the bench, where such examinations would sometimes occur. The initial examination represents a strong improvement in the NHL's concussion management policy, as it increases the likelihood of concussion detection. Where the old policy allowed a motivated athlete to insist he is okay and return on the

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<sup>353</sup> Gare Joyce, *Hard Heads Shun Safer Helmets Heads up / Some of Hockey's Greats Continue to Sport Helmets They Wouldn't Let Their Kids Wear. The NHL and its Players are Finally Putting Their Heads Together*, THE GLOBE AND MAIL (CANADA), Dec 2, 1997, at A30.

<sup>354</sup> *The night Plante made goaltending history*, NHL.com (Nov. 1, 2012), <http://www.nhl.com/ice/news.htm?id=383063>.

<sup>355</sup> Alexander Hecht, *Article, Legal and Ethical Aspects of Sports-Related Concussions: The Merril Hoge Story*, 12 Seton Hall J. Sports & Ent. L. 17, 63 (2002).

<sup>356</sup> Bobby Brooks, *2011 NHL Playoffs: Are the New NHL Concussion Protocols Really Working?* BleacherReport.com (Apr. 18, 2011), <http://bleacherreport.com/articles/669655-head-cases-are-the-new-concussion-protocols-really-working>.

<sup>357</sup> James Christie, *Background "Helmets Masterton Injury Got Players Thinking,"* THE GLOBE AND MAIL (CANADA), Aug. 27, 1992.

next shift, the new policy requires a physician evaluation if an athlete exhibits any of the following symptoms: loss of consciousness, motor coordination or balance problems, slowness to get up following a hit to the head, blank or vacant look, disorientation, clutching the head after a hit, or a visible facial injury in combination with any of the above. Evidently, the threshold requiring an evaluation is purposefully low. . . . While both the NHL and NFL have made positive changes to their concussion management policies, the policies remain deficient.<sup>358</sup>

175. Worse, throughout the decades, the NHL has purposefully failed to warn against and protect its players from the risks and consequences of head trauma.

### **1. The NHL Spurns Many Different Calls for Change Throughout the Eras**

176. The NHL has paid cynical public relations lip-service to the need for change to its violent manner. Then NHL president John Zeigler stated as follows in a 1977 Canadian media interview: “Probably the best way to change violence in the NHL is to change our image.”<sup>359</sup>

177. Regarding a brawl between seven Philadelphia Flyers players and five New York Rangers players, then executive vice president of the NHL, Brian O’Neil, stated in a 1978 Canadian media interview: “The violence was all over the ice and even threatened to include the fans.”<sup>360</sup> However, O’Neil went on to acknowledge that the NHL’s own “rulebook” did not provide for the types of fines that he claimed he would have like to have seen “levied” against the brawlers.<sup>361</sup>

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<sup>358</sup> Mitch Koczerginiski, *Article: Who is at Fault When a Concussed Athlete Returns to Action?*, 47 Val. U.L. Rev. 63 (2012).

<sup>359</sup> United Press International, *Game Breeds Frustration Hockey Needs Fights to Stay Clean: Ziegler*, THE GLOBE AND MAIL (CANADA), Dec. 3, 1977.

<sup>360</sup> Associated Press, *“Disgusting” Brawl Sees 12 Players Ejected Heavy Fines Will be Sought After Exhibition of Violence*, THE GLOBE AND MAIL (CANADA), Sept. 28, 1978.

<sup>361</sup> *Id.*

178. In a 1978 media interview regarding an NHL player who swung his stick at another player, O'Neil proclaimed that the three game suspension without pay for the player was not "severe enough."<sup>362</sup>

179. But when calls for change came from various authorities and institutions, the NHL was quick to retreat from its public-relations lip service.

**a. The Sports Violence Act of 1980**

180. The United States Congress proposed bill entitled, the Sports Violence Act of 1980.<sup>363</sup>

181. The proposed bill was intended to deter and punish episodes of violence in professional sports by imposing federal criminal penalties. Proponents of the act said that federal legislation to control violence in professional sports was necessary because existing mechanisms, such as league self-regulation and state and local laws, had been ineffective for curbing violence.

182. At the congressional hearings for the act, an attorney who represented professional athletes spoke about a concussion injury sustained by one of his clients, Dennis Polonich, an NHL player, and the need for federal regulation to deter violent conduct:

In a professional hockey game between the Colorado Rockies and the Detroit Red Wings played at Olympia Stadium in Detroit, Michigan on October 25, 1978, Wilf Paiement of the Colorado Rockies attacked Dennis Polonich of the Red Wings with his stick. Paiement struck Polonich across the face with his hockey stick in a manner described by Referee John McCauley as a "baseball type swing." Polonich sustained severe nasal fractures, multiple lacerations to the face and a concussion. If the blow had struck Polonich an inch higher on his face, he could well have lost the sight of one or both eyes. Polonich had no recollection of the events for several hours after the injury. As a result of the attack, Paiement was suspended for 15 games by the National Hockey League. He was fined the

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<sup>362</sup> James Christie, *NHL Crackdown Decks Williams For Three Games* (Dec. 16, 1978).

<sup>363</sup> H.R. 7903, 97th Cong., 2d. Sess., 126 Cong Rec. 20,890 (1980).



maximum amount allowed permitted under the rule – Five Hundred Dollars (\$500.00). The Wayne County Prosecutor’s Office investigated the incident and decided not to prosecute Paiement. However, Prosecutor William L. Calahan stated “The operation of the law does not stop at the ticket gates of any sports event in my jurisdiction. Even though this specific incident will not result in a criminal prosecution, everyone concerned should understand that criminal violence occurring during any sporting event will, if supported by fact of law, be prosecuted.”

Polonich is my client and I can assure you that his ability to play professional hockey has been severely impaired as a result of this injury. It is my judgment that the penalty and fine assessed against Paiement was too little and too late to deter such future acts of violence.<sup>364</sup>

183. In addition, at the hearing, there was a prepared statement by Rick Horrow, an author on the topic of sports violence. Mr. Horrow mentioned another NHL incident where the player that caused the concussion suffered little consequences for his actions of violence:

A September 21, 1969 incident gave rise to *Regina v. Green* and *Regina v. Maki*. That night, Boston Bruin Ted Green almost lost his life after being struck by a hockey stick wielded by Wayne Maki of the St. Louis Blues. Green “came off the boards and cuffed Maki with the back of his glove.” Maki retaliated with his stick, coming straight overhead – as described at the NHL disciplinary hearing – “like a logger splitting a stump.” Milt Schmidt, the Bruin coach at the time, said it was “the worst thing he ever saw in a hockey game. He fell like a cut log.” Green sustained a serious concussion and massive hemorrhaging. After two brain operations, he regained only partial sensation and has never recovered 100 percent. Two charges were brought; one against each participant. While the incident was condemned both in and out of hockey, and despite the severity of the injuries and the intentional violence involved, all the criminal charges were dismissed. A one-month league suspension was the only penalty imposed.<sup>365</sup>

184. Further, the hearing discussed a paper entitled *Sports Injuries: Who Pays?* authored by John Liskey, which provided, in pertinent part, regarding the concussion problem endemic to the NHL:

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<sup>364</sup> *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 97th Cong. 26, at 39 (1980) (statement of Brian M. Smith).

<sup>365</sup> *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 97th Cong. 26, at 92 (1980) (statement of Rick Horrow).

Dan Maloney of the Detroit Red Wings was the third player in NHL history to stand trial for criminal assault. Maloney allegedly attacked Brian Glennie of the Toronto Maple Leafs from behind, punched him in the face, threw him to the ice, punched him again, then twice lifted him from the ice and dropped him. Glennie was diagnosed with a severe concussion. The Court stated that Glennie could not have consented to this kind of violence as “part of the game.” The Court said “There’s good law and good sense to apply the criminal law equally and evenly within the society and the sporting arena.” On July 1, 1976, Dan Maloney was acquitted because of a hung jury. In an unusual procedure, a statement by the jury accompanied the acquittal, pleading for an end to violence in hockey.<sup>366</sup>

185. Nevertheless, in response to the bill, then NHL president Zeigler was quoted by a Canadian media outlet as stating at a subcommittee hearing that “under the present laws in the United States and in the provinces of Canada, people charged with refereeing the sports seem to have done a responsible job.”<sup>367</sup> Ziegler was also quoted as stating that the NHL “didn’t need the federal Government to interfere.”<sup>368</sup>

#### **b. The McMurtry Report**

186. William McMurtry (“McMurtry”), a Canadian lawyer and brother of Chief Justice of Ontario R. Roy McMurtry,<sup>369</sup> authored a report criticizing the excessive violence in the NHL.<sup>370</sup> After McMurtry interviewed then NHL president Clarence Campbell and various NHL players, McMurtry concluded that that professional hockey, “with its emphasis on winning and use of violence as a tactical instrument to achieve that goal,” was a cause of violence in amateur

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<sup>366</sup> *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 97th Cong. 26, at 239 (1980) (Appendix).

<sup>367</sup> Al Strachen, *Intervention Spoils Sport*, THE GLOBE AND MAIL (CANADA) (Nov. 26, 1980).

<sup>368</sup> *Id.*

<sup>369</sup> William R. McMurtry, Q.C., Senior Litigator, Advocate for the “Underdog” and Compassionate Leader Dies at 72, taglaw.com (Feb. 12, 2007).

<sup>370</sup> *Id.*; William R. McMurtry, Q.C., INVESTIGATION AND INQUIRY INTO VIOLENCE IN AMATEUR HOCKEY (Aug. 21, 1974), <https://archive.org/details/investigatamhock00onta>.

hockey.<sup>371</sup> McMurtry went on to further criticize the NHL, observing that “[i]t is perhaps the only sport, professional or otherwise, that encourages the use of physical intimidation outside the rules as a legitimate tactic,” and that “[a]ll players spoken to stated there was tremendous peer pressure to stand and fight.”<sup>372</sup>

**c. Hockey Legends Blow the Whistle**

187. Some players staged a backlash against the NHL, the most notable of which was Bobby Hull (“Hull”). The NHL inducted Hull into its “Hall of Fame” in 1983. Hull played in the NHL from 1957 until 1980. Hull was a Stanley Cup champion and has been considered among the greatest NHL players of all time.<sup>373</sup> In the years leading to his retirement, Hull took it upon himself to call for change to the violence in the NHL. In 1975, Hull staged a one-game protest strike.<sup>374</sup> Hull was also vocal about why he rejected the NHL’s commodification of violence:

“The idiot owners, the incompetent coaches, the inept players are dragging the game into the mud. They’re destroying it with their senseless violence. The game is no pleasure any more. It’s an ordeal.”<sup>375</sup>

188. In another article concerning violence in the NHL, a media outlet quotes Hull as saying, “I’ve watched NHL, WHA, junior and minor hockey and it’s all the same. Why do people think they have to annihilate the opposition to win?”<sup>376</sup>

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<sup>371</sup> *Id.* at 17.

<sup>372</sup> *Id.*

<sup>373</sup> MICHAEL ULMER, THE HOCKEY NEWS, THE TOP 100 NHL PLAYERS OF ALL TIME (McClelland and Stewart 1998).

<sup>374</sup> Neil Campbell, *After 22 Years as superstar Hull quits as player, stays as executive*, THE GLOBE AND MAIL (CANADA), Nov. 2, 1978.

<sup>375</sup> *Id.*

189. Like Hull, Bobby Orr was also critical of the NHL's use of violence to entice spectators. The NHL inducted Orr into its "Hall of Fame" in 1979 at age 31.<sup>377</sup> Orr played in the NHL from 1966 until 1979. Orr was a Stanley Cup champion<sup>378</sup> and considered by ESPN as one of the 50 greatest athletes of the 20th Century.<sup>379</sup> Orr was quoted as follows by a media outlet regarding the violence in the NHL: "If the NHL can't see what they're doing to hockey, then shame on them."<sup>380</sup>

190. Mike Bossy played in the NHL from 1977 until 1987.<sup>381</sup> Bossy was a first team NHL all-star five times<sup>382</sup> and holds many goal scoring records.<sup>383</sup> The NHL inducted Bossy into its Hall of Fame in 1991.<sup>384</sup> In the year after Bossy retired from the NHL, a Canadian media outlet documented Bossy's denouncement of NHL goons, and the need for the NHL to issue

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<sup>376</sup> *Mad Enough to Stop Fighting*, THE GLOBE AND MAIL (CANADA) (Mar. 24, 1979).

<sup>377</sup> ESPN – Boston Hall of Fame, ESPN.com, <http://espn.go.com/sportsnation/boston/halloffame/jersey?id=6857654> (last visited Apr. 3, 2014)

<sup>378</sup> *Id.*

<sup>379</sup> Top N. American Athletes of the Century, <http://espn.go.com/sportscentury/athletes.html> (last visited Apr. 3, 2014).

<sup>380</sup> Trent Frayne, *Orr Scores When Aiming at Hockey Violence*, THE GLOBE AND MAIL (CANADA) (Jan 24, 1989).

<sup>381</sup> Mike Bossy, Legends of Hockey, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p199101&type=Player&page=bio&list=ByName> (last visited Apr. 3, 2014)

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

harsh suspensions against players who intentionally try to injure others.<sup>385</sup> Bossy was in one fight in an NHL game.<sup>386</sup>

**d. Canadian Authorities Seek Reform**

191. In the wake of the defeat of the NHL's all-stars to a then Soviet Union team in 1979, Ontario Attorney-General Roy McMurtry took the opportunity to criticize the violence in the NHL:

The people who run hockey in this country have a lot of explaining to do . . . During the past 10 years, there has been much less emphasis placed on the basic skills – such as skating and handling the puck - than there has been on the physical aspects of the game.

You go out and watch the youngsters play, as I have often over the years, and the kids are inhibited from developing their skills because they're waiting for someone to take a run at them, or try to run them through the boards

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It doesn't matter what an attorney-general says, but when you've got top-notch hockey players like Bobby Hull, Jean Beliveau, and Maurice Richard criticizing the professional leagues for the lousy model they've provided for hockey in general, then one has to perhaps sit up and listen to what they're saying.<sup>387</sup>

192. Similarly, Otto Jelinek, Canadian Minister of State for Fitness, was quoted by a media outlet regarding his desire to meet with then NHL president Zeigler: "I have to express my point of view and the point of view of the federal Government regarding violence in sport.

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<sup>385</sup> James Christie, *The Boss Is back Book by former Islander star lashes out at NHL violence*, THE GLOBE AND MAIL (CANADA) (Nov. 19, 1988).

<sup>386</sup> Mike Bossy, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/11198> (last visited Mar. 31, 2014).

<sup>387</sup> *McMurtry upset violence blamed for NHL's defeat*, THE GLOBE AND MAIL (CANADA), Feb. 21, 1979.

My meeting with Mr. Ziegler won't be a confrontation, but I have to share my views with him.”<sup>388</sup>

**e. Additional Backlash**

193. In 1984, a Canadian media outlet reported on a forum conducted by the Ontario Commission regarding hockey violence.<sup>389</sup> During the three-day forum, former NHL players provided their insight.<sup>390</sup> However, a then NHL executive vice-president commented on the forum, stating that he did “not believe hockey to be above the law, but steadfastly maintains that the sport has its own disciplinary measures and can govern itself.”<sup>391</sup>

194. In 1985, a Canadian media outlet noted the NHL's rejection of criticism about its violence.<sup>392</sup> The article quoted Ziegler as saying, “The facts don't bear out all the dialogue going on (about violence)' . . . . 'I myself don't see any need for a dramatic change.’”<sup>393</sup>

195. In 1987, a U.S. media outlet reported on a meeting about the violence in the NHL between then Mayor of Boston, Massachusetts, Ray Flynn, and Ziegler.<sup>394</sup> The article quoted

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<sup>388</sup> James Christie, *Plans meeting with Ziegler NHL worries Jelinek*, THE GLOBE AND MAIL (CANADA), Mar. 7, 1985.

<sup>389</sup> James Christie, *Sports violence: Controversial can of worms*, THE GLOBE AND MAIL (CANADA), Apr. 28, 1984.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> *Ziegler rejects views of violence increase*, THE GLOBE AND MAIL (CANADA) (Feb. 6, 1985).

<sup>393</sup> *Id.*

<sup>394</sup> *Boston Mayor Ray Flynn met Friday with NHL president*, CHICAGO TRIBUNE, Feb. 21, 1987, [http://articles.chicagotribune.com/1987-02-21/sports/8701150191\\_1\\_general-manager-emile-francis-stanley-cup-playoffs-nhl](http://articles.chicagotribune.com/1987-02-21/sports/8701150191_1_general-manager-emile-francis-stanley-cup-playoffs-nhl).

Flynn as having told Ziegler ““that if professional leagues did not live up to their responsibilities, then the league should expect community intervention.””,<sup>395</sup>

**f. The Rink**

196. In or about 1996, NHL arenas began using a seamless glass system above the rink boards. The seamless glass eliminated the metal dividers between the rectangular panes of independent flexible plexiglass that was standard prior to the introduction of the seamless glass. The seamless glass allowed fan to see the game more clearly, and pucks shot around the corners did not take as many strange bounces.

197. Players immediately began complaining, describing hits against the seamless glass as being like hitting concrete or a brick wall.

198. In a January 19, 1997 *New York Times* article, NHL player Derian Hatcher was quoted as saying: “It’s hard. It doesn’t move. It seems like guys will get injuries. Being hit into this is not fun.””,<sup>396</sup>

199. When asked to respond to players’ concerns regarding the seamless glass systems, Arthur Pincus, the NHL’s vice president of public relations, said, “We have heard those feelings and we are looking at a variety of things dealing with injuries. There is only anecdotal evidence about a variety of factors and we are looking into any number of factors.”

200. The NHL failed to act for another three years, until, prior to the 2000-2001 season, it adopted regulations requiring arenas with tempered glass to meet certain flexibility

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<sup>395</sup> *Id.*

<sup>396</sup> Joe Lapointe, *Players Call a New Type of Glass Around Rinks Unsafe*, N.Y. TIMES Jan. 19, 1997, <http://www.nytimes.com/1997/01/19/sports/players-call-a-new-type-of-glass-around-rinks-unsafe.html>

standards.<sup>397</sup> The NHL gave a target deadline for improving the safety of seamless glass of December 31, 2002.<sup>398</sup>

201. It was not until the 2011-2012 season, however, that the NHL finally required all arenas to convert the seamless glass system to a flexible acrylic system.<sup>399</sup>

**g. Player Equipment**

202. The NHL has long known that hard cap plastic shoulder pads have increased the incidence of concussions.

203. The NHL recognized the risk of hard plastic capped elbow pads in 2003, when rule changes required any hard plastic in elbow pads be covered by a layer of foam.<sup>400</sup>

204. NHL players have publically stated that harder and more protective equipment gives player a feeling of “invincibility,” which leads NHL players to play much more physically and aggressively; extensively padded players are less concerned about injuring themselves in a hard body check.<sup>401</sup>

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<sup>397</sup> *Statement of William L. Daly Before the House of Representatives Committee on Energy and Commerce, Subcommittee on Commerce, Regarding Concussions in Sports* (Mar. 13, 2014), <https://energycommerce.house.gov/hearing/improving-sports-safety-multifaceted-approach>.

<sup>398</sup> Transcript of media conference call with NHL Commissioner Gary Bettman, Oct. 3, 2002, [http://sportsillustrated.cnn.com/hockey/news/2002/10/03/media\\_conference/](http://sportsillustrated.cnn.com/hockey/news/2002/10/03/media_conference/).

<sup>399</sup> *Statement of William L. Daly, supra; NHL opens its 95th season tomorrow night with spotlight on Winnipeg return, B's Cup defense*, NHL.COM (Oct. 5, 2011) <http://www.nhl.com/ice/news.htm?id=594578>.

<sup>400</sup> David Shoalts, *Elbow, shoulder pads under scrutiny in bid to reduce NHL head injuries*, THE GLOBE AND MAIL (CANADA), Dec. 13, 2011, <http://www.theglobeandmail.com/sports/hockey/elbow-shoulder-pads-under-scrutiny-in-bid-to-reduce-nhl-head-injuries/article4180946/>.

<sup>401</sup> Douglas Flynn, *NHL Needs to Modify Protective Equipment to Reduce Head Injuries*, NESN.com, (Mar. 19, 2011), <http://nesn.com/2011/03/the-hits-just-keep-coming/>.



205. Hard plastic acts as body armor and simultaneously protects an aggressive player's shoulders, while creating a harder striking surface for the recipient of a blow, leaving many players concussed.<sup>402</sup>

206. The NHL waited, however, until the 2010-2011 season to require foam covering over plastic shoulder pads.<sup>403</sup>

207. The use of hard plastic in both elbow and shoulder pads is still permitted, despite numerous calls to eliminate hard plastic and soften the padding worn by NHL players.<sup>404</sup>

208. As Boston Bruins team president Cam Neely stated in 2012: “‘Personally, I’d rather have a player with a separated shoulder than someone with a concussion’. . . . ‘I don’t know why it’s that difficult to look at the equipment and say, ‘We really need to do something with the shoulder pads and elbow pads.’”<sup>405</sup>

## 2. In 1997, the NHL Undertakes an Untimely and Purposefully Ineffective “Concussion Program”

209. Rather than take immediate measures to protect its players from these known dangers, it was not until 1997 that the NHL launched a concussion program to improve the understanding of this injury.

210. The 1997 NHL Concussion Program was to focus on initial post-concussion signs, symptoms, physical examination findings and time loss (*i.e.*, time between the injury and

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<sup>402</sup> Shoalts, *supra*.

<sup>403</sup> *Id.*

<sup>404</sup> See e.g., Jason Brough, *Flyers owner: NHL equipment too hard* (Dec. 13, 2011), <http://prohockeytalk.nbcsports.com/2011/12/13/flyers-owner-nhl-equipment-too-hard/>.

<sup>405</sup> Fluto Shinzawa, *NHL seeks improvements in equipment safety*, THE BOSTON GLOBE, May 20, 2012, <http://www.bostonglobe.com/sports/2012/05/19/nhl-seeks-improvements-equipment-safety/qCK53CUq1upvel3SC9aidK/story.html>.

medical clearance by the physician to return to competitive play) experienced by NHL players, and assess the utility of initial post-concussion clinical manifestations in predicting time loss among hockey players.

211. The 1997 NHL Concussion Program was conducted over seven NHL regular seasons from 1997 to 2004 to determine the incidence of concussions and time lost. NHL team physicians documented post-concussion clinical manifestations and recorded the date when a player was medically cleared to return to play.

212. Team physicians reported 559 concussions during regular season games.<sup>406</sup> The estimated incidence was 1.8 concussions per 1000 player-hours.<sup>407</sup>

213. By 1997, when the NHL formed the NHL Concussion Program, independent scientists, doctors, and neurologists alike were already convinced that all concussions — even seemingly mild ones — were serious injuries that could permanently damage the brain, impair thinking ability and memory, and hasten the onset of mental decay and senility, especially when inflicted frequently and without time to properly heal.

214. The NHL Concussion Program was publicized as being independent from the NHL, consisting of a combination of the NHL's Player's Association, doctors and researchers from major universities.

215. In actuality however, the NHL Concussion Program was not independent. It consisted of individuals who were already affiliated with the NHL.

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<sup>406</sup> Brian W. Benson et. al, *A prospective study of concussions among National Hockey League players during regular season games: the NHL-NHLPA Concussion Program*, Canadian Medical Ass'n J., May 11, 2011, 905-911.

<sup>407</sup> *Id.*

216. During the time the NHL Concussion Program “studied” the effects of concussions on hockey players, the NHL experienced increasingly devastating and highly publicized career-ending concussions in its players. Many of these incidents are described above.

217. At the conclusion of the NHL Concussion Program studies in 2004, the NHL knew that fighting and concussions in the NHL were serious risks that could result in life altering consequences.

218. NHL Commissioner Gary Bettman, at a 2007 press conference broadcast on CBC Sports, said: “Fighting has always had a role in the game . . . from a player safety standpoint, what happens in fighting is something we need to look at just as we need to look at hits to the head. But we’re not looking to have a debate on whether fighting is good or bad or should be part of the game.”<sup>408</sup>

219. Moreover, the NHL continued to withhold and suppress information from its players, and the health and careers of the NHL’s best players continued to be destroyed.

### **3. The NHL Undertakes an Untimely and Purposefully Ineffective Rule 48**

220. Before the start of the 2010-2011 season, the NHL created Rule 48, which made illegal checks to the head, defined as “[a] hit resulting in contact with an opponent’s head where the head is targeted and the principal point of contact is not permitted,”<sup>409</sup> subject to a five-minute major penalty and automatic game misconduct, as well as possible supplemental discipline if deemed appropriate by the league.

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<sup>408</sup> *Fighting not up for debate: Bettman*, CBC Sports (Mar. 26, 2007), <http://www.cbc.ca/sports/hockey/fighting-not-up-for-debate-bettman-1.661551>.

<sup>409</sup> *Rule 48 – Illegal Check to the Head*, <http://www.nhl.com/ice/page.htm?id=64063> (last visited on Apr. 4, 2014).

221. Rule 48 did not, however, impair the ability of players to deliberately target the head of another player during a body check, which continued to be legal under the NHL rules until the beginning of the 2013-2014 season.

**a. The Head Trauma to Sydney Crosby Further Exposes the NHL's Failure to Warn and Adequately Protect Against the Imminent Risk of Head Trauma and Its Devastating and Long-Term Negative Health Effects**

222. Despite the enactment of Rule 48, concussions continued to end the careers of NHL stars in spectacular fashion, as described above. Moreover, the NHL's concussion problem took center stage, despite Rule 48, in 2011 with its current star player, Sidney Crosby ("Crosby"). Crosby was the first overall draft pick in his NHL class.<sup>410</sup> Crosby, known as the "The Next One,"<sup>411</sup> has received numerous NHL accolades and awards since starting in the league in 2005.<sup>412</sup> The jersey Crosby wore in this third NHL game sold for over \$21,000.<sup>413</sup> A jersey from Crosby's World Junior Hockey Championship days sold for over \$22,000.<sup>414</sup> Crosby

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<sup>410</sup> Greg Fernandez, *Pens Draft History - Sidney Crosby*, NHL.com (June 18, 2012) <http://penguins.nhl.com/club/news.htm?id=634404> (last visited Mar. 28, 2014).

<sup>411</sup> "The Next One," MARITIME MAGAZINE (Jan. 18, 2004) [http://web.archive.org/web/20070504131840/http://www.cbc.ca/maritimemagazine/archives/040118\\_thenextOne.html](http://web.archive.org/web/20070504131840/http://www.cbc.ca/maritimemagazine/archives/040118_thenextOne.html) (last visited Mar. 28, 2014).

<sup>412</sup> Greg Fernandez, *Pens Draft History - Sidney Crosby*, (Jun 18, 2012) <http://penguins.nhl.com/club/news.htm?id=634404> (last visited Mar. 28, 2014)

<sup>413</sup> Guide: Sidney Crosby, talkicehockey.com, [http://www.talkicehockey.co.uk/guides/ice\\_hockey\\_stars\\_sidney\\_crosby.html](http://www.talkicehockey.co.uk/guides/ice_hockey_stars_sidney_crosby.html) (last visited Mar. 28, 2014).

<sup>414</sup> *Crosby jersey nets \$22,100 in auction*, CBC SPORTS (Jan. 20, 2005) <http://www.cbc.ca/sports/hockey/crosby-jersey-nets-22-100-in-auction-1.568876> (last visited Mar. 28, 2014).

led his Canadian team to an Olympic gold medal at the 2014 Winter Olympics in Sochi, Russia.<sup>415</sup> A jersey that he wore during the Olympics sold for \$37,100.<sup>416</sup>

223. On January 1, 2011, Crosby and his NHL team played against the Washington Capitals.<sup>417</sup> Named the “2011 NHL Winter Classic,” the game was televised on NBC in the United States, on CBC in Canada, and on RDS in French-speaking areas of Canada.<sup>418</sup> During the game, opposing player Dave Steckel (“Steckel”) landed a blindside hit on Crosby.<sup>419</sup> Steckel played in the NHL from 2005 until 2013.<sup>420</sup> In years prior to blindsiding Crosby, Steckel had suffered a broken finger during a game, which required pins.<sup>421</sup>

224. Although Crosby suffered concussion symptoms from Steckel’s hit, he returned to play in the internationally televised game.<sup>422</sup> Four days later, Crosby’s team played the Tampa

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<sup>415</sup> Athletes: Sidney Crosby, XXII Olympic Winter Games, <http://www.sochi2014.com/en/athlete-sidney-crosby> (last visited Mar. 28, 2014).

<sup>416</sup> *Sidney Crosby Olympic jersey sells for \$37,100 at NHLPA online auction*, The Hockey News May 19, 2010, <http://www.thehockeynews.com/articles/33682-Sidney-Crosby-Olympic-jersey-sells-for-37100-at-NHLPA-online-auction.html> (last visited Mar. 28, 2014).

<sup>417</sup> *Pen’s Crosby Returns on Monday*, EDMONTON JOURNAL (ALBERTA), Nov. 21, 2011, at C5.

<sup>418</sup> Travis Hughes, *Winter Classic TV Coverage from NBC, CBS, RDS*, SB NATION (Jan. 1, 2011), <http://www.sbnation.com/nhl/2011/1/1/1907928/winter-classic-tv-coverage-nbc-cbc-rds-penguins-capitals-outdoor-hockey> (last visited Mar. 28, 2014).

<sup>419</sup> *A Timeline of Sidney Crosby’s Concussion and Recovery*, THE CANADIAN PRESS (Sept. 7, 2011) <http://www.nhl.com/ice/news.htm?id=587898> (last visited Mar. 28, 2014); *Pen’s Crosby Returns on Monday*, *supra*.

<sup>420</sup> *Players – David Steckel*, NHL.com <http://www.nhl.com/ice/player.htm?id=8469483> (last visited Mar. 28, 2014).

<sup>421</sup> Tarik El-Bashir, *Steckel Is Close; Clark Not So Much*, THE WASHINGTON POST (Mar. 27, 2008), <http://voices.washingtonpost.com/capitalsinsider/steckel-is-close-clark-not-so.html>.

<sup>422</sup> *A Timeline of Sidney Crosby’s Concussion and Recovery*, THE CANADIAN PRESS (Sept. 7, 2011), <http://www.nhl.com/ice/news.htm?id=587898> (last visited Mar. 28, 2014).

Bay Lightning.<sup>423</sup> Although Crosby had neck pain, he played in the game.<sup>424</sup> During that subsequent game, Crosby's head was driven into the boards by opposing player Victor Hedman ("Hedman").<sup>425</sup> Hedman received only a minor penalty.<sup>426</sup> Later that year, Hedman signed a 5-year, \$20 million contract extension.<sup>427</sup>

225. As a result of Hedman's hit on Crosby, Crosby felt additional concussion-like symptoms the next day.<sup>428</sup> Crosby was then diagnosed by a specialist at the University of Pittsburgh with a concussion.<sup>429</sup> The specialist determined that the concussion was affecting Crosby's vestibular system, which is the part of the brain that allows an individual to stand upright and maintain balance.<sup>430</sup> In the subsequent months, Crosby experienced concussion-like symptoms, which he then addressed at a September 2011 press conference.<sup>431</sup>

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<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> Josh Hargreaves, *Crosby discusses lengthy recovery road from concussions, safety of the game*, THE GLOBE AND MAIL (Sept. 5, 2013) <http://www.theglobeandmail.com/sports/hockey/crosby-discusses-lengthy-recovery-road-from-concussions-safety-of-the-game/article14118504/> (last visited Mar. 28, 2014).

<sup>426</sup> Angie Carducci, *Crosby Talks Concussion, Blindside Hits*, Inside Hockey (Jan. 8, 2011), <http://insidehockey.com/crosby-talks-concussion-blindside-hits> (last visited Mar. 28, 2014).

<sup>427</sup> Damian Cristodero, *Lightning Strikes*, TAMPA BAY TIMES (Nov. 30, 2011).

<sup>428</sup> *A Timeline of Sidney Crosby's Concussion and Recovery*, THE CANADIAN PRESS (Sept. 7, 2011), <http://www.nhl.com/ice/news.htm?id=587898> (last visited Mar. 28, 2014).

<sup>429</sup> *Id.*

<sup>430</sup> *Id.*

<sup>431</sup> *Id.*

**4. NHL Players Still Face the Same Imminent Risk of Head Trauma and Its Devastating and Long-Term Negative Health Effects**

**a. Scientists Continue to Warn Against the Concussion Problem**

226. In 2013, researchers published an article titled, *Bodychecking Rules and Concussion in Elite Hockey*.<sup>432</sup> The abstract of the article confirms that the various, supposed rule changes implemented and studies conducted by the NHL have not protected its players:

The number of NHL concussions or suspected concussions was lower in 2009 –10 than in 2010 –11 (IRR 0.61; 95% CI 0.45, 0.83), but did not increase from 2010 – 11 to 2011–12 (IRR 1.05; 95% CI 0.80, 1.38). 64.2% of NHL concussions were caused by bodychecking, and only 28.4% of concussions and 36.8% of suspected concussions were caused by illegal incidents. We conclude that rules regulating bodychecking to the head did not reduce the number of players suffering concussions during NHL regular season play and that further changes or stricter enforcement of existing rules may be required to minimize the risk of players suffering these injuries.<sup>433</sup>

**b. The NHL Has Not Implemented Effective Change**

227. The report resulting from the NHL Concussion Program was not published until May 17, 2011 – 20 years after publication of the Colorado Medical Society guidelines, and ten years after the first International Symposium on Concussion in Sport. The report amounted to little more than a statistical analysis of concussions suffered and time lost by players.

228. Notably, the NHL Concussion Program report did not take a position on the long-term effects of concussions, and did not provide any specific recommendations as to return to play guidelines or rule changes.

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<sup>432</sup> Laura Donaldson, Mark Asbridge, Michael D. Cusimano, *Bodychecking Rules and Concussion in Elite Hockey*, PLOS ONE (July 2013), <http://www.plosone.org/article/fetchObject.action?uri=info%3Adoi%2F10.1371%2Fjournal.pone.0069122&representation=PDF>.

<sup>433</sup> *Id.* at 1.



229. After the publication of the NHL Concussion Program report, the NHL continued to take the position that additional research was needed.

**c. The NHL Keeps Profiteering from Extreme Violence**

230. Although fighting has long been forbidden at other high levels of play, including the Olympics and the NCAA, the NHL has refused to follow suit, despite incontrovertible evidence that eliminating fighting would significantly reduce concussions. In fact, the NHL's supposed incentives against fighting create the absurd situation where players take off each other's helmet before fighting in order to receive a lesser penalty.<sup>434</sup> Pictured below are Krys Barch ("Barch") and Brett Gallant ("Gallant") doing just that in a September 19, 2013 NHL preseason game:



231. Barch and Gallant fought two more times during that game.<sup>435</sup> Gallant has not played in any regular season NHL games. Barch has played in the NHL from 2006 until the

<sup>434</sup> Sean Leahy, *Krys Barch, Brett Gallant find rule loophole, remove each other's helmets before fight* (Video), Yahoo! Sports (Sept. 19, 2013), <http://sports.yahoo.com/blogs/puck-daddy/krys-barch-brett-gallant-rule-loophole-remove-other-011011548--nhl.html>.

<sup>435</sup> *Krys Barch 2013-2014 Preseason Fight Card*, <http://www.hockeyfights.com/players/598/fightcard/pre2014> (last visited Apr. 2, 2014).

present. In 2009, Barch had eight teeth shattered by an opposing player's stick during an NHL game.<sup>436</sup> In 2011, Barch was suspended for one game due to his utterance of a racial slur at an opposing player during an NHL game.<sup>437</sup>

232. There were two other fights between Barch's and Gallant's teammates during the September 19, 2013 NHL preseason game,<sup>438</sup> which is symbolic of the type of extreme and unnecessarily violence still afflicting the NHL. Ryan Carter ("Carter") and Travis Hamonic ("Hamonic") were two of the players that also fought in the September 19, 2013 game.<sup>439</sup> When Carter's and Hamonic's teams played again on March 1, 2014, Carter and Hamonic fought again.

233. In the March 1, 2014 game, Carter skated full speed and delivered the following hit on Hamonic's teammate:



<sup>436</sup> Mike Heika, *Barch sticks it to Wings Stars enforcer loses some teeth, shows grit with his quick return*, THE DALLAS MORNING NEWS, Jan. 30, 2009, at 10C.

<sup>437</sup> Erik Gudbranson, *Panthers' Barch suspended*, SUNSENTINEL, Jan. 5, 2012, [http://articles.sun-sentinel.com/2012-01-05/sports/fl-florida-panthers-barch-suspended-0106-20120105\\_1\\_racial-slur-panthers-coach-kevin-dineen-erik-gudbranson](http://articles.sun-sentinel.com/2012-01-05/sports/fl-florida-panthers-barch-suspended-0106-20120105_1_racial-slur-panthers-coach-kevin-dineen-erik-gudbranson).

<sup>438</sup> Travis Betts, *Game Recap*, (Penalty Summary) (Sept. 19, 2013), <http://islanders.nhl.com/gamecenter/en/recap?id=2013010038> (last visited Apr. 2, 2014).

<sup>439</sup> *Id.*

234. Seconds later, Hamonic attacked Carter, as depicted below:



235. When Hamonic attacked Carter, there were less than five minutes left in the game and Hamonic's team was losing 5 goals to 1.<sup>440</sup> The announcer recounting the incident stated, "That's a retaliatory attack."<sup>441</sup> Minutes before Hamonic attacked Carter on March 1, 2014, Hamonic had just attacked Carter's teammate, Steve Bernier ("Bernier"), as depicted below:



<sup>440</sup> *Id.*

<sup>441</sup> *Ryan Carter vs Travis Hamonic Mar 1, 2014*, <https://www.youtube.com/watch?v=CQE9qEjAl6U> (last visited Apr. 2, 2014).



236. As pictured above, the refs stood watching, letting Bernier and Hamonic fight. Giving the play-by-play of the fight between Bernier and Hamonic, the announcer said, “Travis Hamonic, you know is a tough, aggressive guy. But with a couple concussions this year, you are not sure that’s what you want him to get involved in. But emotions are becoming more apparent with Travis. That would be a concern for me. Yeah, you know what? You need him to play his tough game. His physical game. and he certainly can’t afford to take a good solid punch in the head area.”<sup>442</sup> Another announcer interjected, “Well, he’s a feisty guy. He competes. He doesn’t like losing. Of course who does? But taking it out on Bernier. Willing combatant in his own right who has some toughness to him. Travis able to land a pretty hard right.”<sup>443</sup>

237. The extreme violence from the September 19, 2013 and March 1, 2014 NHL games is symbolic of the hundreds of other violent incidents that have happened and will continue to happen this NHL season and that will also induce head trauma. According to hockeyfights.com, as of March 30, 2014:

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<sup>442</sup> *Steve Bernier vs Travis Hamonic Mar 1, 2014*, [https://www.youtube.com/watch?v=WKK4RqXpV\\_c](https://www.youtube.com/watch?v=WKK4RqXpV_c) (last visited Apr. 2, 2014).

<sup>443</sup> *Id.*

(a) In the 2013-2014 NHL regular season thus far, there have been a total of 444 fights, involving 282 players.<sup>444</sup> Out of 1,118 games, 346 had fights.<sup>445</sup> Of those games with fights, 75 had more than one fight.<sup>446</sup> For the preseason, there were a total of 100 fights in 104 games, involving 149 players, with 59 games involving at least one fight.<sup>447</sup>

(b) In the 2012-2013 NHL regular season, there were a total of 347 fights, involving 245 players.<sup>448</sup> Out of 720 games, 264 had fights.<sup>449</sup> Of those games with fights, 66 had more than one fight.<sup>450</sup>

(c) In the 2011-2012 NHL regular season, there were a total of 546 fights, involving 321 players.<sup>451</sup> Out of 1,230 games, 423 had fights.<sup>452</sup> Of those games with fights, 98 had more than one fight.<sup>453</sup> For the preseason, there were a total of 72 fights in 108 games, involving 115 players, with 49 games involving at least one fight.<sup>454</sup>

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<sup>444</sup> *NHL Fight Stats*, <http://www.hockeyfights.com/stats/> (last visited Mar. 30, 2014).

<sup>445</sup> *Id.*

<sup>446</sup> *Id.*

<sup>447</sup> *Id.*

<sup>448</sup> *Id.*

<sup>449</sup> *Id.*

<sup>450</sup> *Id.*

<sup>451</sup> *Id.*

<sup>452</sup> *Id.*

<sup>453</sup> *Id.*

<sup>454</sup> *Id.*

(d) In the 2010-2011 NHL regular season, there were a total of 645 fights, involving 348 players. Out of 1,230 games, 458 had fights.<sup>455</sup> Of those games with fights, 117 had more than one fight.<sup>456</sup> For the preseason, there were a total of 115 fights in 106 games, involving 183 players, with 67 games involving at least one fight.<sup>457</sup>

(e) In the 2009-2010 NHL regular season, there were a total of 714 fights, involving 341 players.<sup>458</sup> Out of 1,230 games, 493 had fights.<sup>459</sup> Of those games with fights, 171 had more than one fight.<sup>460</sup> For the preseason, there were a total of 164 fights in 109 games, involving 209 players, with 74 games involving at least one fight.<sup>461</sup>

(f) In the 2008-2009 NHL regular season, there were a total of 734 fights, involving 355 players.<sup>462</sup> Out of 1,230 games, 509 had fights.<sup>463</sup> Of those games with fights, 173 had more than one fight.<sup>464</sup> For the preseason, there were a total of 151 fights in 111 games, involving 183 players, with 70 games involving at least one fight.<sup>465</sup>

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<sup>455</sup> *Id.*

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> *Id.*

<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

(g) In the 2007-2008 NHL regular season, there were a total of 664 fights, involving 324 players.<sup>466</sup> Out of 1,230 games, 473 had fights.<sup>467</sup> Of those games with fights, 143 had more than one fight.<sup>468</sup> For the preseason, there were a total of 121 fights in 105 games, involving 164 players, with 63 games involving at least one fight.<sup>469</sup>

(h) In the 2006-2007 NHL regular season, there were a total of 497 fights, involving 292 players.<sup>470</sup> Out of 1,230 games, 384 had fights.<sup>471</sup> Of those games with fights, 87 had more than one fight.<sup>472</sup> For the preseason, there were a total of 92 fights in 105 games, involving 138 players, with 55 games involving at least one fight.<sup>473</sup>

(i) In the 2005-2006 NHL regular season, there were a total of 466 fights, involving 276 players.<sup>474</sup> Out of 1,230 games, 357 had fights.<sup>475</sup> Of those games with fights, 80 had more than one fight.<sup>476</sup> For the preseason, there were a total of 108 fights in 111 games, involving 138 players, with 67 games involving at least one fight.<sup>477</sup>

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<sup>466</sup> *Id.*

<sup>467</sup> *Id.*

<sup>468</sup> *Id.*

<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

<sup>471</sup> *Id.*

<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*



(j) In the 2003-2004 NHL regular season, there were a total of 789 fights, involving 340 players.<sup>478</sup> Out of 1,230 games, 506 had fights.<sup>479</sup> Of those games with fights, 172 had more than one fight.<sup>480</sup> For the preseason, there were a total of 137 fights in 124 games, involving 168 players, with 79 games involving at least one fight.<sup>481</sup>

(k) In the 2002-2003 NHL regular season, there were a total of 668 fights, involving 321 players.<sup>482</sup> Out of 1,230 games, 464 had fights.<sup>483</sup> Of those games with fights, 139 had more than one fight.<sup>484</sup> For the preseason, there were a total of 143 fights in 120 games, involving 165 players, with 78 games involving at least one fight.<sup>485</sup>

(l) In the 2001-2002 NHL regular season, there were a total of 803 fights, involving 348 players.<sup>486</sup> Out of 1,230 games, 519 had fights.<sup>487</sup> Of those games with fights, 172 had more than one fight.<sup>488</sup> For the preseason, there were a total of 122 fights in 109 games, involving 168 players, with 67 games involving at least one fight.<sup>489</sup>

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<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> *Id.*

<sup>481</sup> *Id.*

<sup>482</sup> *Id.*

<sup>483</sup> *Id.*

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> *Id.*

<sup>489</sup> *Id.*

(m) In the 2000-2001 NHL regular season, there were a total of 684 fights, involving 329 players.<sup>490</sup> Out of 1,230 games, 469 had fights.<sup>491</sup> Of those games with fights, 155 had more than one fight.<sup>492</sup> For the preseason, there were a total of 126 fights in 122 games, involving 167 players, with 72 games involving at least one fight.<sup>493</sup>

238. Tens of thousands of extremely violent incidents inducing head trauma have already happened in years past and will continue to happen unless the NHL is held to account for its misconduct through this lawsuit.

## **V. TOLLING OF THE STATUTES OF LIMITATIONS**

239. Plaintiffs and members of the Class could not have discovered through the exercise of reasonable diligence, did not know, and could not have known that the NHL was and is committing wrongdoing, including but not limited to: (i) subjecting and continuing to subject Plaintiffs and the Class to the imminent risk of head trauma and, as a result, devastating and long-term negative health consequences; (ii) failing to and continuing to fail to warn Plaintiffs and the Class of the risks and consequences of head trauma; (iii) concealing material scientific and anecdotal information from Plaintiffs and the Class about the risks and consequences from head trauma; and (iv) failing to institute policies and protocols that could have and will protect Plaintiffs and the Class from suffering or exacerbating head trauma sustained during practice or in games.

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<sup>490</sup> *Id.*

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

240. The NHL affirmatively concealed and continues to conceal its wrongdoing from Plaintiffs and the Class. The NHL instituted purposefully-ineffective studies and changes that were solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma, that the NHL's wrongdoing was taking place, that there was not and is not an imminent threat of head trauma for NHL players, and that there were not and are not risks and consequences of head trauma. The NHL had and has superior knowledge of its wrongdoing, that there was and is an imminent threat of head trauma for NHL players, and the risks and consequences of head trauma to NHL players. Plaintiffs and the Class did not have this knowledge and could not have had this knowledge through reasonable diligence.

241. Accordingly, all applicable statutes of limitations have been suspended with respect to any claims by Plaintiffs and the Class and, moreover, the NHL is estopped from relying on any statutes of limitations defenses of this action.

## **VI. CLASS ACTION ALLEGATIONS**

242. Plaintiffs brings this action their behalf and as a class action on behalf of all former and current NHL players (the "Class").

243. This action is properly maintainable as a class action under Rule 23.

244. The Class is so numerous that joinder of all members is impracticable.

245. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) Whether the NHL breached its duty to warn and protect the Class of the risks and consequences of head trauma.

246. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs do not have any interests adverse to the Class.

247. Plaintiffs are adequate representatives of the Class, have retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

248. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

249. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

250. The NHL acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

#### **COUNT I - NEGLIGENCE**

251. Plaintiffs incorporate by reference all paragraphs, except under other Counts, as if fully set forth herein.

252. The NHL had and has a duty to take all reasonable steps to protect Plaintiffs and the Class from the risks and consequences of head trauma. The NHL breached that duty to protect Plaintiffs and the Class by creating, fostering, and promoting a culture of extreme violence, including violence from fighting, where head trauma to Plaintiffs and the Class has been and is imminent. The NHL breached that duty to protect Plaintiffs and the Class by failing to establish reasonable rules and protocols for preventing head trauma and minimizing the effects of head trauma, including during games and practice. What changes the NHL made to its violent

construct were purposefully-ineffective and solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma, that the NHL's wrongdoing was taking place, that there was not and is not an imminent threat of head trauma for NHL players, and that there were not and are not risks and consequences of head trauma.

253. The NHL had a duty to take all reasonable steps to warn Plaintiffs and the Class about the risks and consequences of head trauma. The NHL breached that duty to warn Plaintiffs and the Class by failing to inform Plaintiffs and the Class about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players.

254. As a direct and proximate result of the NHL's breach of its duties, Plaintiffs and the Class have and will continue to suffer injuries.

255. Plaintiffs, on behalf of themselves and the Class, seek damages, including punitive damages, and equitable relief against the NHL, including but not limited to medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have and will suffer as a result of the NHL's misconduct.

## **COUNT II - INTENTIONAL HARM**

256. Plaintiffs incorporate by reference all paragraphs, except under other Counts, as if fully set forth herein.

257. The NHL has intentionally created, fostered, and promoted a culture of extreme violence, including violence from fighting. The NHL has known that, due to such violence, head trauma to Plaintiffs and the Class has been and is imminent. The NHL has known that head trauma to Plaintiffs and the Class has and will have devastating and long-term negative health

effects. Despite this knowledge and to maintain its revenue stream from its violent construct, the NHL has and does intentionally subject Plaintiffs and the Class to head trauma.

258. The NHL purposefully failed to establish reasonable rules and protocols for preventing head trauma and minimizing the effects of head trauma, including during games and practice. What changes the NHL made to its violent construct were purposefully-ineffective and solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma, that the NHL's wrongdoing was taking place, that there was not and is not an imminent threat of head trauma for NHL players, and that there were not and are not risks and consequences of head trauma.

259. The NHL failed to inform Plaintiffs and the Class about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players.

260. As a direct and proximate result of the NHL's misconduct, Plaintiffs and the Class have and will continue to suffer injuries.

261. Plaintiffs, on behalf of themselves and the Class, seek damages, including punitive damages, and equitable relief against the NHL, including but not limited to medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have and will suffer as a result of the NHL's misconduct.

### **COUNT III - FRAUDULENT CONCEALMENT**

262. Plaintiffs incorporate by reference all paragraphs, except under other Counts, as if fully set forth herein.

263. The NHL has intentionally created, fostered, and promoted a culture of extreme violence, including violence from fighting. The NHL has known that, due to such violence, head trauma to Plaintiffs and the Class has been and is imminent. The NHL has known that head

trauma to Plaintiffs and the Class has devastating and long-term negative health consequences. Despite this knowledge and to maintain its revenue stream from its violent construct, the NHL has failed and continues to fail to inform Plaintiffs and the Class about the risks and consequences of head trauma.

264. *Inter alia*, the NHL failed to inform Plaintiffs and the Class about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players.

265. The NHL purposefully failed to establish reasonable rules and protocols for preventing head trauma and minimizing the effects of head trauma, including during games and practice. What changes the NHL made to its violent construct were purposefully-ineffective and solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma, that the NHL's wrongdoing was taking place, that there was not and is not an imminent threat of head trauma for NHL players, and that there were not and are not risks and consequences of head trauma.

266. As a direct and proximate result of the NHL's misconduct, Plaintiffs and the Class have and will continue to suffer injuries. The damages suffered by Plaintiffs and the Class are not attributable to any of lack of diligence in investigation.

267. Plaintiffs, on behalf of themselves and the Class, seek damages, including punitive damages, and equitable relief against the NHL, including but not limited to medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have and will suffer as a result of the NHL's misconduct.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs and the Class pray for judgment as follows:



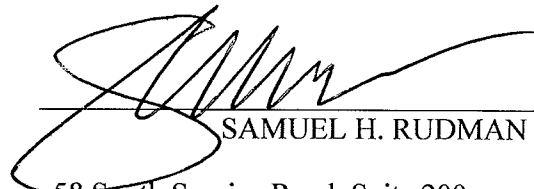
- A. Granting an injunction and/or other equitable relief against the NHL and in favor of Plaintiffs for medical monitoring;
- B. Awarding Plaintiffs compensatory damages against the NHL;
- C. Awarding Plaintiffs punitive damages against the NHL;
- D. Awarding Plaintiffs' such other relief as may be appropriate;
- E. Certifying a class action, appointing Plaintiffs as Lead Plaintiffs and Plaintiffs' Counsel as Lead Counsel; and
- F. Granting Plaintiffs their prejudgment interest, costs and attorneys' fees.

**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury on all issues so triable in this Complaint.

DATED: April 8, 2014

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN  
ROBERT M. ROTHMAN  
DAVID A. ROSENFELD  
MARIO ALBA

A handwritten signature in black ink, appearing to read 'Samuel H. Rudman', is written over a horizontal line.

SAMUEL H. RUDMAN

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